No. 12527

United States
Court of Appeals
For the Ninth Circuit.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

Transcript of Record
In Two Volumes
Volume II
(Pages 553 to 1097)

Appeal from the District Court for the Territory of Alaska Division Number One.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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GEORGE B. SCHMIDT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Would you state your name, please?

A. George B. Schmidt.

Q. Where is your residence, Mr. Schmidt?

A. Juneau, Alaska.

Q. Mr. Schmidt, did you work for the Juneau Spruce Corporation [492] in Juneau?

A. I did.

Q. Between what dates were you working for the Company?

A. From May 6, 1947, to January 19, 1948.

Q. Where have you been employed before that, Mr. Schmidt?

A. With the Juneau Lumber Mills.

Q. Where have you been employed since then?

A. Columbia Lumber Company.

Q. What is your present position with the Columbia Lumber Company?

A. Assistant to the President.

Q. During the time you were with the Juneau Spruce Corporation, what was your position?

A. Assistant Manager.

Q. During the time you were with the Juneau Lumber Mills incorporation what was your position?

A. Vice-President and Assistant Manager.

(Testimony of George B. Schmidt.)

Q. What was the nature of the work you did for the Juneau Lumber Mills?

A. Well, I handled their sales and had full charge when the owner and President of the concern wasn't there—Mr. Rutherford.

Q. How many years have you been employed in the lumber industry?

A. In Alaska, twelve years, and practically all my life before [493] that—all my working life.

Q. Mr. Schmidt, are you familiar with the types of logs that are produced in Southeastern Alaska?

A. Yes.

Q. Have you observed the quality and kind of logs delivered to the Juneau Lumber Mills and Juneau Spruce and Columbia Lumber Company from Southeastern Alaska?

A. Yes.

Q. How long did you work for the Juneau Lumber Mills where you would be able to observe this log supply?

A. All the time I worked for them.

Q. How long was that?

A. From 1937 to when they sold, about eleven years—ten years.

Q. Mr. Schmidt, during that period of time, from how many different sources would you say, have you seen logs bought and sawed?

A. From all over Southeastern Alaska, the Juneau area and Ketchikan area and West Coast area.

Q. Would you be familiar with the particular

(Testimony of George B. Schmidt.)

kinds of timber that can be produced from this particular area?

A. Different kinds of timber.

Q. What kinds?

A. Spruce, hemlock and cedar. Cedar is very small and normally spruce—the mills attempt to get at least sixty [494] five per cent, and probably thirty-five per cent hemlock, and the balance of cedar, which is very normal.

Q. Will you explain the logging practice in Southeastern Alaska as to logging particular kinds and leaving other kinds, or just how you do it?

A. You have no choice in the matter. When you take an area you have to cut it clean. That is the Forest Service requirements. When you choose an area and buy at a sale you attempt to get an area with spruce in it, because spruce is the most salable type of lumber that you can get.

Q. But you do have to take whatever comes?

A. That is right.

Q. Is all the commercial timber in Southeastern Alaska under the Forest Service?

A. Yes; that is right. There are a few exceptions, but so rare that you can't really call them a source.

Q. The other source is from what?

A. Privately owned timber that they may have taken homestead rights on, but by and large forest timber is controlled by the Forest Service in Southeastern Alaska.

(Testimony of George B. Schmidt.)

Q. Mr. Schmidt, are you familiar with the quality and grades and different kinds of lumber that would be produced from lots of timber which the Forest Service sells?

A. I can speak from the experience I have had; yes. [495]

Q. Have you had any experience with the timber at Edna Bay?

A. Yes, when I was working with the Juneau Lumber Mills we had a sale there, I think it was in 1937 or 1938. We produced about three and a half million feet of timber in that area, which is largely spruce. Out of it our requests were about twenty-five per cent clears and the balance was common. At that time we didn't produce shop lumber. There wasn't a great deal of a market for shop at that time, but there was a big demand for clears. That is one of the reasons we took that timber in that area. The timber was very choice and would produce a great deal of clears.

Q. Would you explain again clears, shop and common, again?

A. Clear lumber is one without a great many defects. It runs into B and better, and C and D. B and better allows a very few defects in the way of knots or pitch pockets or things of that sort. C and D progressively allow more defects. Your shop has defects in it which would not be permitted in a grade of common, No. 1 common, but in the shop you can have large knots in the thing but get

(Testimony of George B. Schmidt.)

clear cuttings out of your piece of lumber and produce cuttings for doors and windows and things of that sort. Common is divided into three classes, 2 and better common, and No. 3 common, and a No. 4. Up here a No. 4 isn't of much value. In order to get it on the market it costs more [496] than it is worth. No. 3 has defects so that probably a piece can hold together and still be sold as a No. 3. No. 2 has plenty of knots in it, but it is workable and usable as construction lumber and select lumber is higher. It runs between clear and common.

Q. The common is the lower priced? Is there much spread between the best common and the poorest clear?

A. It depends on the market and the time of production.

Q. Is there a market now for shop lumber?

A. Yes, there is a market for shop lumber.

Q. Does that bring a better price than the common?

A. Yes, a considerably better price.

(Whereupon the jury was duly admonished and Court adjourned until two o'clock p.m., May 4, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: At this time, your Honor, I desire to make the same motion on behalf of the witness Flint on behalf of the International as I did

(Testimony of George B. Schmidt.)

with the other witnesses, and I presume the Court will take the motion under advisement?

The Court: Yes.

Mr. Banfield: May it please the Court, in this case we intend to show what the operations of the Juneau Spruce Corporation would have been in 1948 during the period from [497] April 1, 1948, to May 31, 1949; March 31, 1949, had there not been a picket line at the mill or any inducement to the employees not to work, and in doing so we have prepared a prospective profit and loss statement which will have to be proved by other witnesses. The purpose of this witness and of the exhibit, which I will state the offer, is to show the grades of lumber which would be from logs garnered, as Mr. Hawkins testified, for the year 1948, to show in an easy way what kind and to what extent each grade of lumber would be produced. That, of course, would later be followed up by testimony of grades and quantities in the grades that would be realized on the market, so the testimony of the witness at this time, standing by itself, would not appear to have any purpose in the case, but I wanted to connect it up to what the purpose is to show and apprise the Court and counsel.

The Court: Very well.

Mr. Banfield: I would like to have this marked for identification, two sheets of paper which we are offering as one document, which are marked Page 17 and Page 18 and which bear the heading "Ju-

(Testimony of George B. Schmidt.)

neau Spruce Corporation, Juneau, Alaska, Production by Grades, Months, etc.''

The Court: You don't have to identify it if it is for identification. It may be marked for identification.

Mr. Andersen: As one exhibit?

Mr. Banfield: As one exhibit. [498]

Clerk of Court: It will be marked Plaintiff's Exhibit No. 10 for identification.

Mr. Andersen: Are you going to interrogate this witness regarding this?

Mr. Banfield: Yes, I am.

Mr. Andersen: Don't you have an extra copy of it?

Mr. Banfield: I have one for myself and associate attorney. I am sorry I don't have another one; however, we have no objection to your coming over here at the time.

(Whereupon the witness George B. Schmidt resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Schmidt, have you examined the document marked Plaintiff's Exhibit 10 for identification previously? A. Yes, I have.

Q. Have you studied it?

A. Yes, I have.

Q. Have you studied each of the items on this exhibit with particular reference to the column marked ''Percent''? A. Yes.

(Testimony of George B. Schmidt.)

Q. Now, that column shows certain percentages of the various types of lumber and I would like to know at this time if those percentages reflect accurately the percentage in each grade which the lumber produced in Southeastern Alaska would run after it was graded? [499]

A. It would depend—it would reflect what they produced, and as I understand, they got on a basis of practically 50% from——

Q. I mean from all Southeastern Alaska, all the logging camps? A. That is correct.

Q. Have you examined these percentages with a view of determining whether they are higher or lower than the average run of logs in Southeastern Alaska?

A. Well, if you take and exclude the West Coast, you would probably.

Q. What do you mean by the West Coast?

A. The West Coast of Southeastern Alaska, Kosciusko Island and that area in there. I would say this is a very conservative estimate, because my experience with timber in that area, there is twenty-five per cent clears and from other areas from ten to fifteen per cent, depending on the exact—the different locations they were taken from, and I would think if this represents quite a percentage from the Kosciusko area, then their percentage is too low. I would think that it would run about twenty per cent, if you were cutting general run logs from Southeastern Alaska including the logs from Kosciusko area.

(Testimony of George B. Schmidt.)

Q. If you were just cutting logs with only a small proportion from that area, that is general run? [500] A. This would be it.

Q. Would you say that there is any question but what these grades, of clears, for instance, the total——

Mr. Andersen: May it please the Court, may I again object to these leading questions.

Mr. Banfield: I was just going to show what it shows on the exhibit, your Honor.

Mr. Andersen: The exhibit speaks for itself.

The Court: Well, let's hear the question.

Q. Mr. Schmidt, it shows on the exhibit here that——

Mr. Andersen: Pardon me, that is not in evidence. The document is not in evidence. It has only been offered for identification. It is not an exhibit.

The Court: Well, I don't quite get your objection now.

Mr. Andersen: Well, he refers to it as an "exhibit." It is not an exhibit in the case.

Mr. Banfield: It is an exhibit for identification.

Mr. Andersen: Only.

Mr. Banfield: Sure.

The Court: I think that is understood.

Mr. Andersen: That is true, your Honor.

Q. Now, Mr. Schmidt, this computation is based upon 15.54 per cent of the logs deemed clear logs?

A. That is, clear spruce. [501]

Q. Clear spruce logs? A. Yes.

(Testimony of George B. Schmidt.)

Q. If you were cutting a particular run of logs in Southeastern Alaska from several, numerous sources, would the percentage of clears be higher or lower than that figure?

A. Well, if you take the general run of logs it would be less than this figure, I think, if you just take the ordinary run, but if you take the West Coast it would be considerably higher than this.

Q. If you took fifty per cent of the logs from what is called the Edna Bay area, and particularly, all from Kosciusko Island, under the Forest Service practices, and took fifty per cent of your logs from the general logging areas in Southeastern Alaska, what percentage of clears would you then get?

A. You are talking about clear spruce now?

Q. Clear spruce.

A. I should say it would be twenty per cent.

Q. Now, of the clear hemlock—how would that run from just a general run of logs without any from the Kosciusko Island area?

A. I think you have got it about right here, pretty close to five per cent, and I don't think there would be much difference. It might be a trifle more if you include Kosciusko. [502]

Q. If you have fifty per cent of the logs come from general loggers and fifty per cent from the Edna Bay, what would the per cent of clear hemlock then be?

A. It would probably run about six per cent.

(Testimony of George B. Schmidt.)

Q. Six per cent? A. Yes.

Q. Now, Mr. Schmidt, with respect to shop lumber, the exhibit here shows 11.37 per cent as being shop lumber. What do you think would be the percentage from the general run of logs in Southeastern Alaska in the shop grade?

A. Well, I think this also is low. I believe it should be pretty close to twelve per cent. I think twelve or thirteen per cent; I think around in there.

Q. How would it be in the shop grade if you took fifty per cent from the general area and fifty per cent from the Kosciusko Island area?

A. I think a recovery there would be about fifteen per cent.

Q. Instead of 11.37 as shown here?

A. That is right.

Q. Now, in the cheaper grade of lumber, that is the common spruce and hemlock—is that generally sold at the same price, Mr. Schmidt? Common spruce and hemlock?

A. Yes, there is no difference.

Q. How would the common run from just general logging areas as compared to how it runs as shown on this sheet? [503]

A. Well, I think that, so long as you have got the others in this sheet under what I estimate, therefore your common would be showing too much common.

Q. In other words, this exhibit for identification shows too high a per cent of common?

(Testimony of George B. Schmidt.)

A. Too high a per cent; yes.

Q. This exhibit shows 67.48. About what do you think it would run?

A. It will run about, probably about fifty-six per cent, something like that.

Q. Now these for Nos. 1, 2, 3 common?

A. They include select.

Q. Select merchandise, those three classes generally are called select?

Mr. Andersen: Could I interrupt just a moment, your Honor, to inquire whether this witness compiled this information?

A. You mean this that is on here?

Mr. Andersen: Yes.

A. No, sir.

Mr. Andersen: Then, may it please the Court, I think I shall object to the proposed document for identification. I presume it is to go into evidence. The document was compiled by somebody else other than the witness. They can't call a witness to correct their own document, or [504] explain their own statement on a different basis than it would probably be offered. I think it is incompetent, irrelevant and immaterial.

Mr. Banfield: If the Court please, this document, of course is just one of the very numerous items which have to be proved in a damage case of this kind. This document was not prepared by this witness, but by a person who will follow. It takes various experts to testify on various matters. This

(Testimony of George B. Schmidt.)

witness is an expert on this particular subject. This person who prepared it will be produced at a later time, and I will state that we are relying on it even though it is a conservative estimate.

Mr. Andersen: The person who compiled it should be called, otherwise four or five people will be testifying to the same exhibit. It is incompetent, irrelevant and immaterial, may it please the Court, for this witness to testify to it.

Mr. Banfield: It is only out of order, that is all.

The Court: It is within the discretion of the Court for a witness to testify out of order, but there should be some reason. If there isn't, first there should be the witness who made or compiled the record.

Mr. Banfield: It is only for the convenience of the Court. If we put that witness on to testify in regard to this, how he prepared this, and then there would have to [505] be a witness put on to prove the authenticity of the figures.

The Court: You mean this is done for the accommodation of this witness?

Mr. Banfield: It will save bringing him back twice and another witness twice, and there are other exhibits. He would have to be on the witness stand twice and it would delay the trial interminably.

The Court: If it will expedite the trial, that is a sufficient reason. Objection overruled.

Mr. Andersen: As I understand it, every witness is going to testify twice about the same docu-

(Testimony of George B. Schmidt.)

ment? I can't see the sense in that. It is cumulative and repetitious, a waste of time and a delay of the trial, rather than an expedition of the trial.

Mr. Banfield: I am afraid, Mr. Andersen, you didn't understand. It will save them appearing twice and they will only have to appear once.

Mr. Andersen: I understood both—two witnesses were going over one document. That is what I say is cumulative and repetitious.

The Court: Until we reach that stage we can hardly pass on whether it is cumulative.

Mr. Andersen: That is what counsel stated, your Honor.

The Court: There is no particular chance that this [506] testimony is going to be undisputed?

Mr. Andersen: It may well be.

The Court: Then the Court wouldn't permit any cumulative testimony. You may proceed.

Mr. Banfield: Whatever the previous question was, I will withdraw it.

Q. Now, Mr. Schmidt, with regard to the second page of this exhibit for identification, page 18 of the exhibit. Under "Cedar" there is a showing there that cedar would run .6 per cent or six tenths of one per cent of the logs from this entire area. Do you consider that a correct statement?

A. I think that is excessive.

Q. What do you think it would run?

A. It is so small I don't think it would run more than .2 of one per cent.

(Testimony of George B. Schmidt.)

Q. Is cedar more expensive than common or less expensive?

A. It depends on what the recovery is. If it is clears it runs up, but most of the cedar in this area is common.

Q. Shop grade?

A. Perhaps the same as the other, the hemlock and the spruce.

Q. Now, Mr. Schmidt, have you examined with particular attention the distribution of grades within the classifications of lumber? For instance, this exhibit for identification shows various types and sizes of vertical grain clear spruce, B and better, and of the clear spruce it [507] states that the B and better vertical grain 5 by 4 by 6 and wider would be 1.56 per cent, and going on for the different sizes and different grades and different types, it gives the percentage of clear spruce which would come out in each type. Have you examined that?

A. I have examined that, but that is largely a matter of manufacturing. I could only speak for the total of clears and the total of shop and common.

Q. You don't know how it would run out?

A. I couldn't break it down in those sections.

Q. When you were producing lumber, how was it determined what actual sizes you will cut out?

A. There is two or three different factors in that. One, are your orders, and then usually you

(Testimony of George B. Schmidt.)

try to cut what brings the best price on the market and what is marketable. That is determined by the market at the time of the cutting. There is no set rule for what you are going to cut today and what you might cut next month.

Q. Now, Mr. Schmidt, this exhibit for identification shows that there would presumably be a total production of 4,680,000 feet of lumber a month; in other words, forty-six million a year that would be, wouldn't it? A. Yes.

Q. You were at the Juneau Spruce plant until what date? A. June 19, 1948. [508]

Q. Were you acquainted with the condition of the plant at the time you left there? A. Yes.

Q. Would the plant, in that condition, have been capable, working on a two-shift basis, of producing in the year 1948 forty-seven million feet of lumber?

A. Yes; it probably would exceed that. We were cutting around 100,000 feet to a shift at the time. That would be 200,000 feet a day, twenty-five days, two and a half million a month.

Q. Two and a half?

A. Wait a minute. One hundred thousand—that is two hundred thousand a day—and a twenty-five day month.

Q. What did you say would be the average daily production?

A. Pretty close to two hundred thousand feet.

Q. Would that be with making allowances for

(Testimony of George B. Schmidt.)

temporary shutdowns, accidents and things like that?

A. Yes; sometimes you exceeded that and some days under that, but the average was one hundred thousand feet to a shift.

Q. Mr. Schmidt, what was the average production of this mill when Mr. Rutherford had it?

A. About the same, but he only ran one shift.

Q. During the time you worked for the Juneau Spruce Corporation, was there ever any certification by the [509] National Labor Relations Board designating any appropriate bargaining unit at the mill?

A. I didn't understand your question.

Q. While you were employed by the Juneau Spruce Corporation, was there any certification by the National Labor Relations Board determining any appropriate bargaining unit at the mill?

A. No.

Q. Was any labor organization or other representative ever designated by the National Labor Relations Board as the bargaining agent for any employees? A. No.

Q. Mr. Schmidt, were there any longshoremen who were members of Local 16 employed by the Juneau Spruce Corporation during the period that you worked for that Company?

A. That is the local organization?

Q. Yes. Tell me, while you were working for the Juneau Spruce Corporation, what particular job did they do?

(Testimony of George B. Schmidt.)

A. They loaded—when they were employed by the Juneau Spruce Corporation, they loaded some scows for customers and loaded some boats for customers, usually at their request, and it was the understanding at the time that the work——

Mr. Andersen: Just a minute.

Mr. Banfield: I think that answers the question. If he is getting a little off the exact question——

Q. Who owned these boats and scows?

A. The Sommers Construction owned some; the Astoria Puget Sound Canning Company, and there were some fishing boats.

Q. Let me ask this in summary: Were they all owned by somebody other than the Juneau Spruce Corporation? A. Right.

Q. Were there any boats or barges of the Juneau Spruce Corporation loaded at the mill?

A. Yes, I think there was a barge and a boat, the "Santrina" I believe.

Q. Who loaded those?

A. Juneau Spruce employees.

Q. And where did those employees who loaded the "Santrina" and the barge owned by the Juneau Spruce, where did they work?

A. They worked both on the dock and on the boat and on the scows.

Q. They were regular, steady employees?

A. That is right.

Q. Mr. Schmidt, were you ever visited, while employed by the Juneau Spruce Corporation, by

(Testimony of George B. Schmidt.)

any representatives of the International Longshoremen's and Warehousemen's Union?

A. Yes, I was.

Mr. Andersen: I move that be stricken as calling for a conclusion and opinion of the witness.

The Court: If he was ever visited?

Mr. Andersen: Yes, your Honor. I couldn't go down and buy an automobile and say Judge Folta asked me to buy the automobile.

The Court: He isn't attempting to state hearsay; it is his own experience.

Mr. Andersen: It is a conclusion. I make the objection as one of my basic objections. I am sure your Honor understands.

The Court: Same ruling.

Mr. Andersen: I would like to have a foundation laid.

Mr. Banfield: That is what I am starting to do.

The Court: Proceed.

Q. When was this visit?

A. I think along about October 2, 1947.

Q. And where did the visit take place?

A. It took place in the office of the Juneau Spruce Corporation.

Mr. Andersen: I will object to this too, may it please the Court. It is too far in point of time; too remote.

The Court: Objection overruled.

Q. Who was this representative, or who did he represent himself to be?

(Testimony of George B. Schmidt.)

A. Mr. Bulcke. I think he was Secretary of the Longshoremen's Union. [512]

Q. Do you know his first name?

A. No, I don't.

Q. Would you recognize it?

A. I think I would.

Q. Was it Germain Bulcke?

A. I couldn't say.

Q. Did he come there voluntarily, or did you request him to come?

A. No. He came there with some of the local longshoremen.

Q. Tell us what Mr. Bulcke said at that time.

Mr. Andersen: Same objection, your Honor.

The Court: Objection overruled.

A. He demanded that we place three additional men——

Mr. Andersen: I move that be stricken, may it please the Court. The question was what was said.

The Court: If you can, state the language used—the exact language used, and you should do that rather than state your own opinion.

A. He said he wanted to place three additional men on the longshore payroll to do the work, to do the work that the Juneau Spruce Corporation men were doing at the time. He called it "make ready work." He was demanding—he was asking—he said they wanted to take the lumber from the place of rest that it was at the time the boat got into port and it had been the custom to deliver the lum-

(Testimony of George B. Schmidt.)

ber [513] under the slings, and from that point on the longshoremen took it aboard, but he wanted to vary from that course and assume the jurisdiction over the lumber at the point at which it rested when the boat came in.

Q. What distance would there be from this point of rest when the boat came in and the point at which the longshoremen were in the habit of taking it over?

A. It would depend on where the storage was. Sometimes it was in the lower yard; sometimes in the upper yard. We had a carrier with a lift-fork and we put it on the floor level or the yard level and then transported it with a carrier to alongside the ship.

Q. Now in doing this particular work, just which parts of that operation did he want the longshoremen to do?

A. He wanted to put the carrier blocks, put them down where we set the load down with the lift-forks—he wanted to put the carrier blocks under that and wanted another longshoreman to take the carrier blocks away when their slings took possession, and put it aboard the boat, and he wanted a boss to boss the two doing this work.

Q. Could that be described in this way to get it clear to the jury: you have to use two different types of machinery? A. Yes.

Q. One to take it off and set it on the carrier block? [514] A. Yes.

(Testimony of George B. Schmidt.)

Q. And the other to the face of the dock?

A. Yes.

Q. What he wanted was a man to put the carrier block under the load before the lift-truck dropped it on the dock? A. That is right.

Q. And another man, after it arrived at the face of the dock, and after it was hoisted aboard the vessel, to take the carrier block and throw it aside?

A. Yes.

Q. And he wanted a boss for what?

A. Foreman or boss for those two men.

Q. What did you say in reply to this request?

A. I told him that I didn't think that was common practice, and asked if they were doing it at Sitka and Ketchikan and all along the Coast. He said they were. I said I would have to investigate that, so I did.

Q. What did you find out?

A. I wrote a letter to the Columbia Lumber Company and the Ketchikan Spruce Mill and a letter to the Coos Bay Lumber Company and all three denied it.

Mr. Andersen: I move that be stricken.

Q. What was the result of your investigation?

Mr. Andersen: I move that all be stricken as merely hearsay, may it please the Court. [515]

The Court: You may answer whether, from your investigation, the representation made was true or false.

Mr. Andersen: I also want to add the objection

(Testimony of George B. Schmidt.)

to this entire line of questioning as immaterial, and on this particular one also the best evidence objection, your Honor.

The Court: Objection overruled.

A. What was your question?

Q. What was the——

Mr. Andersen: Are those objections overruled, your Honor?

The Court: Yes.

Q. Was the representation made by Bulcke regarding this practice true or false?

A. It was false.

Mr. Andersen: The same objection, and to the answer.

Q. Did you ascertain that his representation was false as the result of your investigation?

Mr. Andersen: I object.

A. Wholly, as I have already told you, by letters from the various people I wrote to, and they denied it.

The Court: Did you communicate that fact to Mr. Bulcke?

A. No, I did not.

Q. Did Mr. Bulcke ever return?

A. No; he didn't talk with me, at least. I didn't see him [516] again.

Q. Did he send anyone to you to follow up on this demand?

Mr. Andersen: I object to that as calling for hearsay.

(Testimony of George B. Schmidt.)

Mr. Banfield: I am asking if he was contacted by anyone on it.

The Court: Objection overruled.

A. No; not in that—not with the request.

Q. What do you mean by that?

A. Well, they endeavored to take action——

Mr. Andersen: I move that be stricken, may it please the court, as not responsive to any question and calling for a conclusion and opinion of the witness.

Mr. Banfield: If the Court please, we are going to show here the next thing was not any request, but it was some other action; in other words, as a result of this or after this, rather—. I wouldn't say result—but in any event, I am going to show the facts, what happened after Mr. Bulcke left. The first fact, I am going to show that it was false, and I am going to show what was done next by the parties, not something said or heard but some physical thing done.

The Court: I think the objection was to the form the answer was taking, and perhaps premature—I don't know.

Mr. Banfield: I will withdraw the question.

The Court: I might say for the benefit of the witness that what was done is what should be testified to, if possible, rather than what was said, unless he is directly asked and it is permitted as to what somebody said.

Q. Mr. Schmidt, what was done after that with respect to carrier blocks?

(Testimony of George B. Schmidt.)

A. Well, the next boat that came in—it was probably ten days or two weeks, I can't tell the exact dates—but the longshoremen put three men to do that work which Mr. Bulcke had asked that they do, without our hiring them.

Q. They just came down?

A. They just came down.

Mr. Andersen: I move that any reference to Mr. Bulcke be stricken and also the answer, as incompetent, irrelevant and immaterial. I might add to the Court, about three witnesses testified as to the blocks on the dock. They weigh about fifteen pounds and had to be laid aside.

The Court: Is this witness attempting to connect Mr. Bulcke with it.

Mr. Andersen: I don't know.

Mr. Banfield: Mr. Card testified they asked to be paid as he arrived in Juneau. Mr. Hawkins testified he was out of town and Mr. Schmidt told him about it, but he didn't know what actually happened. I am getting at what actually happened.

The Court: The witness is asked, or is attempting to connect what occurred there subsequently with the request made by Mr. Bulcke, so the objection is overruled.

Mr. Andersen: Could I have the time stated?

The Court: Yes; the time ought to be fixed.

Q. Do you know the exact date?

A. No, I don't. I know it was the next boat following that interview I had with Mr. Bulcke on October 2.

(Testimony of George B. Schmidt.)

Q. Would it be less than a month?

A. Yes.

Q. Would it be less than two weeks?

A. I couldn't say.

Mr. Andersen: I move all that be stricken as immaterial and too far remote in point of time.

The Court: Objection overruled.

Q. Will you tell us your best estimate of how long it was after Mr. Bulcke's visit?

A. A little over ten days, and probably not over two weeks; I couldn't say for sure.

Q. Did these men actually perform the work as you described before?

A. They actually performed that work.

Q. Did the Juneau Spruce Corporation pay them for it? A. No, sir.

Q. Now, at the time these men performed this work, what kind [519] of boat was this that was being loaded?

A. A steamer; Alaska Steamship steamer.

Q. Was the lumber hoisted aboard with the steamer's winch and crane? A. That is right.

Q. And did the mill's employees, regular employees, move the lumber to the face of the dock?

A. Yes.

Q. And who attached the slings to the lumber?

A. You mean out at the dock? The longshoremen.

Q. Did the Juneau Spruce Corporation pay those longshoremen? A. Not the slingmen; no.

(Testimony of George B. Schmidt.)

Q. Was any special charge made for that particular work by the steamship company?

A. No. You mean against the Juneau Spruce Corporation?

Q. Yes. A. No.

Q. Now, Mr. Schmidt, in October, 1947, were there any other representatives of the I.L.W.U. or Local 16 who called on you?

A. Yes; along about the twenty seventh of October, as I recall it, there was a committee called upon me.

Q. Where did they call on you?

A. At the Juneau Spruce Corporation's office.

Q. Who was present at the time they called?

A. What do you mean? I was in charge and Mr. Hawkins was away.

Q. Do you remember what month that was?

A. October, I believe—October, 1947.

Mr. Andersen: I thought he said October 27.

A. He asked what month. You asked what month?

Q. Yes; and you said October, 1947.

A. Yes.

Q. Mr. Schmidt, I show you here Plaintiff's Exhibit No. 5 for identification, and ask if you wrote this letter.

Mr. Andersen: Before you ask any other questions, will you lay a foundation as to who was present, please.

A. Yes; I wrote this letter.

(Testimony of George B. Schmidt.)

Mr. Banfield: Do you mind if I ask what date is on the letter?

Mr. Andersen: No.

A. October 18.

Q. 1947? A. Yes.

Q. And who was present at the meeting which you have just described as occurring in October, 1947?

A. You mean of the Juneau Spruce Corporation employees or——

Q. I mean everyone who was present.

A. I don't remember who the men were. I know at the time I wrote the letter—it was officers of the Longshoremen, [521] and there were three of them, and I don't—I can't exactly name them. I knew the men and knew they were the officers at that time, but as I say, it is a couple of years now and I don't know their names, and it seems to me it was Ford and McCammon, and I don't remember whether Burgo——

Q. Burgo?

A. I think he was one of them, too, if I am not mistaken, but I couldn't swear to that.

Q. Who else was present? A. That is all.

Q. Of course, you were present? A. Yes.

Q. Do you know, after examining Plaintiff's Exhibit 5 for identification, the exact date this occurred?

A. Of course that was on the date I wrote that letter, and that is a copy of it. I know that.

(Testimony of George B. Schmidt.)

Q. What was the date?

A. October 18, 1947.

The Court: Is the purpose—or do I understand the witness has fixed the date at October 18 instead of the twenty seventh?

Mr. Banfield: That is right, your Honor.

Q. Tell me, what did the longshoremen say?

A. Well, we had a lot—— [522]

Q. What did they say?

A. They objected to the Company loading.

Mr. Andersen: May I ask that that be stricken and ask him to respond to the question by what was said? I think it would be preferable.

The Court: You should say, if you remember the exact—or repeat the exact language—rather than giving your opinion as to the effect of the language.

Q. Do you remember the exact words?

A. I don't remember the exact language.

The Court: The substance and effect?

A. They said they wanted the loading of the "Santrina"—that is the boat that belonged to the Juneau Spruce Corporation—and we had loaded it with fish boxes in breakdown and they said they felt that was their work and objected to the loading that we had done on that boat.

Q. You said something about breakdown—what do you mean?

A. I mean box shook, not put up in boxes—it was the pieces that make the boxes.

(Testimony of George B. Schmidt.)

Q. They objected to the Juneau Spruce Corporation's regular employees loading it? Is that it?

A. Yes, that is it.

Q. What did you say to them?

A. I told them it was our own boat and we felt that was our employees' work, and they stated that they felt that [523] everything that went over the rail was their work.

Q. Was anything further said?

A. I wrote this letter to Mr. Hawkins and put it in his lap.

Q. That was the end of the conversation?

A. That is right.

Q. I ask you, Mr. Schmidt, to read the last paragraph of that letter, with particular reference to what was actually loaded at that time.

A. "Yesterday the C.I.O. Longshoremen's Union representative——"

Mr. Andersen: I think he meant to read it to yourself.

Q. Just read it to yourself. Does that refresh your memory?

A. Yes, that refreshes my memory all right.

Q. Now, what was actually being loaded?

A. That was a scow that went to Prince Rupert and that was on our own equipment; that is, it was on the equipment of the Juneau Spruce Corporation, and was for trans-shipment from Prince Rupert by rail.

Q. Do you know, Mr. Schmidt, when, or during

(Testimony of George B. Schmidt.)

what period of time, during the operations of the Juneau Spruce Corporation, were longshoremen hired as you described before?

A. Well, from its inception as a corporation to October.

Q. Of what year? A. Of 1947. [524]

Q. And were there very many times when longshoremen were hired—how numerous were they?

A. There were not very many times that they were hired—probably, oh, just an estimate—probably ten or twelve times.

Q. Now, during this period that longshoremen were employed by the Juneau Spruce Corporation, who actually did the employment, who hired them?

A. I did.

Q. Did anyone else ever hire them?

A. Not to my knowledge.

Q. Now, did you have anyone assisting you at that time?

A. Yes—Stamm, Mr. Stamm was helping. He may have at my instigation, asked somebody to come in if I had to go out and wasn't able to get in touch with the longshoremen and had to go out around the plant. I may have delegated him to make the request of the longshore office, and I don't recall any specific time.

Q. Would you know about it every time they were hired? A. Oh, yes.

Q. Mr. Schmidt, when this incident occurred of the longshoremen coming down and doing carrier

(Testimony of George B. Schmidt.)

block work, do you know who those longshoremen were—who those men were? A. No, I don't.

Q. You don't know if they were the same ones that came at [525] the same time Mr. Bulcke was there? A. No, I don't.

Q. Do you know if those that came October 2 with Mr. Bulcke were the same persons that came October 18 to see you about the loading of the barge?

A. I couldn't identify them now.

Q. You don't remember now who they were?

A. No.

Mr. Banfield: If the Court please, I just want to check the complaint here and see if the allegations are the same as from previous testimony.

Q. Mr. Schmidt, where did the Juneau Spruce Corporation get its supplies of logging equipment, etc.? A. Mostly out of Seattle.

Q. And were they shipped to the plant here at Juneau?

A. Some were—what do you mean? Delivered at the plant?

Q. Yes.

A. Some, but very few of them. Most of them were shipped to the steamship dock.

Q. Then what happened to them?

A. Then we would have to pick them up from there.

Q. Where was the larger portion of lumber sold that was produced in 1947?

A. The larger portion was sold to the Army, to the U. S. Engineers. [526]

(Testimony of George B. Schmidt.)

Q. Was that during the entire year of 1947?

A. No; up until October.

Q. And after October?

A. Then we sold most of it down in the States, then.

Q. What method did the Juneau Spruce Corporation have in 1947 for disposing of its lumber; that is, what transportation system was used—water, rails, roads, etc.

A. Starting with the Army, after the lumber left the planing mill we delivered it on our dock to Army blocks—they had their own blocks—we set it on their blocks. They had their own carriers, and took it over to the Engineers' base.

Q. And after the Army quit buying in 1947 how was it transported?

A. We put it up in sling load lots. If we had an order for one million feet we prepared as much as we could and stacked it in the upper or lower yard, where we had facilities. When a ship came in we delivered it alongside the ship. The carriers——

Q. Where would the ship be from?

A. Seattle or the Westward, if we shipped to our own yards.

Q. I am going to ask some questions that may seem silly, but they are necessary. Are there any roads between Juneau and the places where the lumber was sold in the States? [527] A. No.

Q. Are there any roads between Juneau and any

(Testimony of George B. Schmidt.)

other town in Alaska? A. Except Douglas.

Q. You say "except Douglas." What do you mean?

A. There are no roads connecting no other towns with Juneau except the road to Douglas.

Q. Are there any railroads serving Juneau, Alaska? A. No.

Q. What method of water transportation was necessary in the operation of this business, if any?

A. Well, we had to either have steamboats, steamships or scows—either one.

Q. Now, Mr. Schmidt, do you know whether steamship service was interrupted in 1947?

A. Yes, there was a strike.

Q. Do you remember during what period of time it lasted?

A. It was from August, September, and I think a part of October, if I recall.

Q. Was there any regular steamship service between Seattle and Juneau in the fall of 1948?

A. Well, there was an interruption of service there on account of the strike; yes.

Q. During what period?

The Court: He has already answered that.

Mr. Banfield: No; not in 1948. That was 1947.

A. I don't recall the months now.

Q. Mr. Schmidt, in your services for Columbia Lumber Company at the present time, do you have any knowledge——

(Testimony of George B. Schmidt.)

Mr. Andersen: Could I interrupt? I didn't get the first part of your question, counsel.

Q. In doing your duties as an employee of the Columbia Lumber Company, do you have any knowledge of the operations of the Columbia Lumber Company in Sitka? A. Yes.

Q. Are you intimately acquainted with those operations? A. Well, yes.

Q. Do you know exactly what they do?

A. Yes.

Q. Have you been over there recently?

A. No.

Q. How many times have you been over there?

A I haven't been over there. I only know what they are doing from daily reports we get.

Q. From who?

A. The mill in Sitka.

Mr. Banfield: I don't believe the witness is qualified to testify as to what I wish, your Honor. That is all. You may cross-examine the witness.

Cross-Examination

By Mr. Paul:

Q. Mr. Schmidt, when you were describing your duties with the Juneau Lumber Mills you mentioned you were Vice President and Assistant Manager?

A. That is right.

Q. Was that your position at the end of the Juneau Lumber Mill operation here?

A. That is right.

Q. You don't mean that you had been Vice

(Testimony of George B. Schmidt.)

President and Assistant Manager ever since 1937, do you?

A. No. The first of 1939—from 1939 up to that time, I had been the accountant; 1937, 1938 and 1939, I was accountant and from then on, Vice President and Assistant Manager.

Q. And who was Vice President before you?

A. He is still a Vice President—F. E. McDermott.

Q. Do you know a J. McDermott?

A. That isn't J.—it is an F. E. If you look at his signature it looks like "J." but is F. E.

Q. Then some mistake might be made in typing?

A. Francis E.—it looks like J.

Q. Are you acquainted with Tom Gardner?

A. He was also—he sold out in 1939. He was part owner.

Q. Before we leave Mr. McDermott, do you say he was Vice President before you and continued on as one of the Vice [530] Presidents along with you? A. That is right.

Q. And when did his connection with the Company cease—the Juneau Lumber Mill?

A. It didn't cease until they sold out.

Q. April 30, 1947—for all practical effects?

A. Yes, that is right.

Q. While Mr. Gardner was connected with the Juneau Lumber Mills, did he occupy a position——

Mr. Strayer: If your Honor please, I am going

(Testimony of George B. Schmidt.)

to object to the question. I don't know where he is going or what the relevancy is. We didn't go into any of the operations of the Juneau Lumber Mill with this witness, and it doesn't appear to be proper cross-examination.

The Court: It doesn't appear to be within the scope of cross-examination.

Mr. Paul: It is preliminary, your Honor. I am asking first, your Honor, what this witness knows about. He was Assistant Manager and Vice President of the Juneau Lumber Mills—about his concern.

The Court: He wasn't asked anything about the Juneau Lumber Mills, as I recall.

Mr. Paul: He was asked, your Honor, about the practice of the Juneau Spruce Corporation.

The Court: Yes. [531]

Mr. Paul: I am entitled to ask whether that practice of the Juneau Spruce Corporation was the same practice and always existed or if there was a new practice, which he entitled or characterized as the Juneau Spruce Corporation's hiring longshoremen.

The Court: It would appear to be part of your own case and not cross-examination.

Mr. Paul: It places his testimony in a proper relation. I am certainly entitled to do that.

The Court: It might do that, but an objection is raised. This witness was called to testify to the operations of plaintiff, and not its predecessor, and

(Testimony of George B. Schmidt.)

there has not been an examination of the operation of its predecessor, and it is not within the scope of the direct examination, and it would appear, therefore, to be part of your case in chief.

Mr. Paul: I am also examining him for this purpose: that in the meeting of—the one at which Mr. Bulcke and Local 16 were present—the testimony, as it stands now, may lead one to draw inferences of a false representation. I am entitled to show that other inferences can be made.

Mr. Strayer: If the Court please——

Mr. Paul: And I have to go into the Juneau Lumber Mill practice to do that.

Mr. Strayer: The representations the witness testified to were at Sitka, Ketchikan and another place I don't [532] recall that longshoremen were doing the work Mr. Bulcke claimed here. It has nothing to do with the Juneau Lumber Mill.

The Court: Although the Court believes in being rather liberal in such matters—but it seems as against the objection that this could not possibly be proper cross-examination. The objection is sustained.

Q. At the time the Juneau Spruce Corporation took over, Mr. Schmidt, how many lumber carriers —by the way, what is the proper name, lumber carriers or hoists?

A. Lumber carriers. Some call it a hoister truck, but lumber carrier is what it most commonly is known as.

(Testimony of George B. Schmidt.)

Q. A four-wheel motor driven truck set way high in the air? A. Right.

Q. And carries a stack of lumber in between the wheels? A. Right.

Q. At the time the Juneau Spruce Corporation took over, did they take over any lumber carriers?

A. They took over all the assets of the corporation.

Q. I just want the number of lumber carriers they took over.

A. I think they took over three, I believe.

Q. And did the Juneau Spruce Corporation acquire any more lumber carriers?

A. Not to my knowledge.

Q. What were those lumber carriers used for around the yard? [533]

A. Transporting lumber from one place to another.

Q. For instance, in loading a ship—what function would the lumber carrier fulfill?

A. They delivered the lumber under the ship's sling.

Q. They would run into the yard, straddle a load there that was in position already, pick it up and run out to the face of the dock? A. Right.

Q. Where they would drop it again on a carrier block?

A. It was on the carrier block. They don't drop it on. They drop the block and all.

(Testimony of George B. Schmidt.)

Q. They carry their own carrier blocks with them?

A. They have to have it to get the lumber on. It goes under the block and lifts the block and the load all in one operation.

Q. And then deposits it at the face of the dock where the sling is attached?

A. That is right.

Q. Now, when Mr. Bulcke talked to you with members of Local 16 about doing some of this, about three of the men doing some of this work relating to carrier blocks, was any mention made of loading of two-wheel trucks? A. No.

Q. Or at any time, that two-wheel trucks had been loaded by longshoremen? [534]

A. The Juneau Spruce Corporation had no two-wheeled trucks. They discarded them.

Q. I am talking about at any time.

Mr. Strayer: I object to anything that preceded the take-over.

Mr. Paul: I don't mean to be presumptious. I believe it is entirely within the ruling of the Court —though counsel feels I am pursuing the same reasoning, it is the same reasoning, but I am proceeding from a different viewpoint. I am trying to determine what the full extent of the conversation was between Bulcke and Local 16 on the one hand and George Schmidt on the other hand.

The Court: That is entirely proper. What is your question?

(Testimony of George B. Schmidt.)

Q. Was there any talk at the time Mr. Bulcke was there with Local 16, on the one hand, and you on the other—this was about October 2, 1947—about the loading of two-wheeled trucks at this plant? A. No.

Q. At any time?

Q. What do you mean by "any time"?

Q. Any time within your knowledge; that would be since 1937.

Mr. Banfield: If the Court please, it is the conversation of October 2. He is now asking for conversation about the Juneau Lumber Mill since 1937. It is not proper [535] cross-examination.

The Court: If he has reason to believe that that was part of the conversation, he has a right to bring it out. I don't know if he has any reason.

Mr. Banfield: He was questioned about what was said by Mr. Bulcke as to whether they used two-wheeled carts, but not what was done in 1937.

The Court: The question is to what the conversation there was.

Mr. Paul: On October 2, 1947.

A. Am I to answer, your Honor?

The Court: Yes.

Q. Yes.

A. Nothing was said about two-wheeled carts.

Q. Was there anything said at this meeting on October 2, 1947, about the loading by longshoremen of any type of vehicle at this sawmill, other than lumber carriers? A. No.

(Testimony of George B. Schmidt.)

Q. At any time I am talking about, at this plant?

Mr. Strayer: You are talking about the conversation of October 2 with Mr. Bulcke about the loading of trucks, is that right?

Mr. Paul: That is right.

A. Nothing, to my knowledge.

Q. Whether it was mentioned in the conversation or not, Mr. [536] Schmidt? Wasn't it understood by you and the longshoremen?

Mr. Strayer: I object.

Mr. Paul: It is cross-examination. I can ask for an understanding.

Mr. Strayer: Obviously this witness can't testify to an understanding the longshoremen had. He might testify as to what was in his own mind.

The Court: True; but on cross-examination if he wants to ask a question of that kind, it is not improper. Objection overruled.

A. Will you please repeat the question?

Q. Irrespective of whether anything was definitely said in the conversation, was it understood by you and by the longshoremen that there had been considerable work done in the past by the longshoremen in transporting lumber from the yard to the face of the dock at the sawmill?

Mr. Strayer: I object to that now on the ground that counsel obviously is referring to the predecessor company, the Juneau Lumber Mills. It is not proper cross-examination. He is not talk-

(Testimony of George B. Schmidt.)

ing about any conversation but about some knowledge the parties had at the time of the conversation.

The Court: The witness testified that when this demand was made on him he had to make inquiries other places because he didn't know there was any such practice, and of [537] course he may be cross-examined on that.

Mr. Strayer: That practice he made inquiry of was a practice of hauling lumber to the bullrail at Sitka, Ketchikan, and one other place.

Mr. Banfield: It was as to the carrier blocks.

Mr. Strayer: The carrier blocks.

Mr. Banfield: Carrier blocks, other places.

The Court: My recollection of the testimony is that the longshoremen demanded the work of moving the lumber from the place of storage to the rail.

Mr. Strayer: If the Court please, I must take an exception. I will refer to the record or ask the witness.

Mr. Banfield: What they wanted was after the mill employees lifted it and dropped it to the deck, they wanted a longshoreman to be there so that when it was dropped he could put a carrier block under it, and another longshoreman at the bullrail to pick up the carrier block when the hoist went away, and there was no representation by Mr. Bulcke to transport it; it was for one man to put the block under it and one man to pick up the block.

(Testimony of George B. Schmidt.)

Mr. Andersen: Your Honor is clearly right. It was testified that on October 2 Mr. Bulcke came and suggested to Mr. Schmidt that they be permitted to handle it from the last place of rest in the yard to and on the dock. That is what Mr. Schmidt testified. There is no question about it.

The Court: I think so too.

Mr. Andersen: Isn't that right?

A. No; what he demanded—he called it "make ready" and the make ready portion was to put those blocks underneath the loads after they were taken from the lift-forks.

Mr. Andersen: May it please the Court, my notes show clearly—I keep correct notes, your Honor—that when Mr. Bulcke came in in the early part of October he talked to Mr. Schmidt about handling the lumber from the last place of rest out of the yard to down on the dock and on the boat. Mr. Schmidt testified to that at first, I believe, or we can have the Reporter read the record.

A. There was no other means of transportation at that time except the carriers.

The Court: Well, if counsel think it is of such great importance, we will have the record read.

Mr. Banfield: I will ask that the record be read on that entire subject.

Mr. Andersen: I don't say it is so important—maybe it is. I have it in black and white.

Mr. Banfield: If the Court please, this might have been what happened——

(Testimony of George B. Schmidt.)

Mr. Andersen: Shouldn't the facts——

Mr. Banfield: He probably said what he wanted was the make ready work from the last place of rest to the bullrail. [539] All right. What is make ready work? What did he mean by that, and what did Mr. Bulcke say? He said he wanted—he stated he wanted to—a man to put the block in place and a man to throw it in the pile when they were through with it, and a foreman over them.

The Court: Is there——

Mr. Andersen: If they want to change that, Mr. Hawkins, may it please the Court, testified they wanted to move it from the last place of rest on the dock down to the—in the yard to the rail. Then you will recall the testimony that Mr. Albright came in and talked to one of the managers and said "I think that is a little unreasonable. I think all the longshoremen here should ask for is from the bullrail out, or the dock out." All the witnesses testified that the longshoremen wanted to take it from the yard down to the dock and from there on. Mr. Albright said he thought it should be modified and it should be only from the dock out. I think that is what was testified to. If you want to strike it, let's have it from the dock out. We will be satisfied.

Mr. Banfield: It is quite important to show the inconsistency of the longshoremen at different times and by different persons. That is what I am showing here.

(Testimony of George B. Schmidt.)

Mr. Paul: I am willing to show by the same theory that it is not inconsistent. [540]

The Court: I was in hopes counsel would agree that after all, there is no dispute to amount to anything of what the parties to this controversy demanded, and that if so, would make it unnecessary——

Mr. Andersen: Correct, your Honor.

The Court: To go into this.

Mr. Andersen: I think it is perfectly clear that on April 10 according to the I.W.A. and all the witnesses for the plaintiff so far, the work the longshoremen asked for on that day and the work the I.W.A. was perfectly willing to turn over to the longshoremen, was moving cargo from the dock out. That is what was testified. There doesn't seem to be any argument on it.

The Court: That is the way it strikes me. Is it inconsistent or different from a later or earlier time?

Mr. Banfield: That is right.

The Court: It might be due entirely to concessions.

Mr. Banfield: And there might be entirely different factors. Before this is over I intend to show the practice in this community.

The Court: The only way to resolve this particular dispute, unless counsel can agree, is to have the Reporter read the record.

Mr. Andersen: How long does a person have to

(Testimony of George B. Schmidt.)

remain in the Territory before he can vote? [541]

The Court: Do you expect to be here long enough?

Mr. Andersen: I am afraid so, your Honor.

The Court: Well, I think you joined in the request.

Mr. Andersen: I am perfectly willing to rest it on the statement of the Court and save time. I think the Court stated it eminently correctly. So far as we are concerned, we will forget the record at this point.

Mr. Banfield: We will too, so long as you don't examine on any claim.

The Court: Do counsel agree that the reading of the record may be dispensed with?

Mr. Banfield: We agree, your Honor. They can cross-examine this witness as to what Mr. Bulcke said and cross-examine about the work of placing carrier blocks and the jobs the foreman was to do.

The Court: You may proceed.

Mr. Paul: Am I allowed to resolve any inconsistencies?

The Court: Do you remember the last question?

Mr. Paul: Was there an understanding?

Mr. Andersen: Just a second.

Q. In your conversation, in which Bulcke and Local 16 were on one side and you were representing the Company, Mr. Schmidt, was there any talk of past practice at this particular plant?

A. No. [542]

(Testimony of George B. Schmidt.)

Q. Was there any discussion between the two groups as to whether this use of carriers was a new practice? A. No.

Q. I am going back, even to the necessity of going back in your memory as much as five years——

Mr. Banfield: If the Court please it wasn't said five years ago, it was said October 2.

Mr. Paul: It depends what he understands we mean by past practice.

Q. As much as five years?

A. Nothing was said by Bulcke about anything in the past. It was the present situation.

Q. I am talking about the longshoremen too that were there with him.

A. No. Bulcke did all the talking.

Q. Was there any offer of negotiation made, request to bargain made, by anyone present there?

A. No; just a statement of what they wanted.

Q. It was assumed that bargaining would take place and then it got down to what you were going to bargain about, was that the situation?

A. No. I told them I would have to take it up with different people to find out whether that was common practice.

Q. You were willing to talk to Mr. Bulcke and Local 16?

A. Well, I talked with them, but I didn't agree to take any [543] action toward letting them have that work.

(Testimony of George B. Schmidt.)

Q. In other words, you wanted to find out whether the actual offer that he had made, as you sometimes call "demand," the actual offer he made could be supported by evidence?

A. That is what I was trying to find out; yes.

Q. I believe you testified that thereafter you had not heard any similar request or demand or offer by the longshoremen? A. No.

Q. Apparently it was abandoned?

A. It wasn't abandoned.

Q. I mean by the longshoremen? A. No.

Q. What do you mean by that?

A. I told you—I think I testified on the next boat that came in that——

Q. Outside of that one event.

A. But that took place after the conversation.

Q. It never happened again? A. No.

Q. Who was the Manager when the Juneau Spruce Corporation took over on May—it was midnight, April 30, 1947? A. Mr. Hawkins.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the [544] jury all present in the box; whereupon the witness George B. Schmidt resumed the witness stand and the trial proceeded as follows:)

Cross-Examination

By Mr. Andersen:

Q. Just a few questions, Mr. Schmidt. On or

(Testimony of George B. Schmidt.)

about the second when Germain Bulcke came in and had a talk with you——

A. I wasn't sure of his name, but it was Mr. Bulcke.

Q. The man you referred to, whatever the name is, in any event. A. That is right.

Q. He came in with somebody from Local 16?

A. Right.

Q. He told you they wanted to discuss the longshoremen's responsibilities?

A. He stated what responsibilities they wanted to talk about.

Q. He told you the longshoremen here would like to move the lumber from the last place of rest down to the dock and thence over the rail onto the boat?

A. The make ready portion; he didn't intend that the men should use the lift-forks or the carrier, but place the blocks for it.

Q. To move it on the dock?

A. To move it on the dock, and take the blocks away from under the load after the load was lifted.

Q. And take it over the rail onto the vessel?

A. That is right.

Q. Whatever type of vessel it may be. I assume the discussion lasted five, ten, fifteen, twenty minutes? A. Right.

Q. You said you would make no decision and would discuss it with other people?

A. Investigate it.

(Testimony of George B. Schmidt.)

Q. And that, in effect, was the end of it?

A. Yes.

Q. You never saw Mr. Bulcke from that day to this? A. That is right.

Q. In the same conversation, you talked about the blocks on the dock—moving the blocks away?

A. Part of it was that one man would put them under and one man would take them away, and then a boss.

Q. The blocks run fifteen pounds or thereabouts? A. Yes.

Q. The reason they are moved away is that the work is done fairly quickly, as quickly as it can be done, and they might get in the way of the carriers, and so they have to be moved away?

A. Yes, but of course, I understood part of a slingman's job was to move them.

Q. They have to be moved? [546]

A. Yes.

Q. They belong to you? A. Yes.

Q. And if they are not moved fairly quickly a carrier coming out might run into them?

A. Right.

Q. Is there a blind spot on those carriers?

A. I have never been up on one; I couldn't tell you.

Q. The driver sits about ten feet high in the air?

A. Probably that much.

Q. He sits on one side of it? A. Yes.

Q. Front or rear?

(Testimony of George B. Schmidt.)

A. He sits in front; it goes either way, so I couldn't tell you.

Q. One time on the rear and another time on the front? A. Yes.

Q. So, when riding on the rear it is difficult to see everything in front, particularly off to the odd side? A. Right.

Q. Unless the blocks are removed they are a great hazard? A. Yes.

Q. They wanted them picked up quickly and moved away?

A. I don't think that was the purpose of their request.

Q. Is that what they said? [547]

A. They said they wanted the placing and removing, the getting ready.

Q. After the load was on the dock they wanted to move these things out of the way?

A. Right.

Q. And, of course, get paid for it?

A. Right.

Q. They were your blocks and were used time after time, over again?

A. That was the job of the slingmen. That is past practice. The slingmen remove those blocks when the load is lifted.

Q. In any event, they asked you for this work?

A. That is right.

Q. And then that completes the conversation?

A. Right.

(Testimony of George B. Schmidt.)

Q. From that time, you never saw Mr. Bulcke again? A. Right.

Q. Sometime after that, around the middle of October, you had a conversation with some men from Local 16? A. Right.

Q. They came down and talked to you about loading all the water-borne commerce?

A. Yes.

Q. Your barge, or your barges, or both? Isn't that true? A. Yes. [548]

Q. You personally had been hiring longshoremen down there for many years, hadn't you?

Mr. Strayer: I object. It is not proper cross-examination. It should be only the Juneau Spruce Corporation.

The Court: I think that the question is not objectionable on that ground. Objection overruled.

A. Yes, sir.

Q. And as I understand it, you had worked for the Juneau Lumber Company some number of years and you stopped working for them on April 30, the last day of the month, and immediately switched over and went to work for the Juneau Spruce, July 1, the following month?

A. Yes.

Q. And there was no difference in the manner in which longshoremen were hired?

Mr. Strayer: The same objection—it is not proper cross-examination.

The Court: I think this is different. I think

(Testimony of George B. Schmidt.)

the question before was to the operations of the predecessor company, but this witness testified that when this demand was made for this work, that he had to inquire elsewhere as to what the practice had been, from which the inference would naturally be made that that certainly had not been the practice, so far as he knew, and therefore that point is open to inquiry. Objection overruled. [549]

A. Will you repeat the question?

Mr. Andersen: I want to be fair to the Court. We have different things in mind.

The Court: My ruling is——

Mr. Andersen: May I withdraw the question? I would be sort of taking an advantage. May I withdraw it?

Q. This conversation you had with a delegation from Local 16 sometime in October—they had a discussion with you about the manner in which longshoremen were hired, didn't they?

A. They were——

Q. Could I suggest this, Mr. Schmidt? That you sort of answer the questions first, then if there is an explanation, if it is necessary, you can give it?

A. No.

Q. Were these men you had seen working on the dock there from time to time over a period of years?

A. Yes.

Q. You say you knew them?

A. I knew them.

Q. All these men had been down working on this

(Testimony of George B. Schmidt.)

particular dock, hadn't they, from time to time?

Mr. Strayer: I submit that is not proper.

Mr. Andersen: I submit it is eminently proper.

The Court: Objection overruled. [550]

Q. These men had been down working on the dock there from time to time?

A. Yes, they had.

Q. What they in effect told you was that they would now like a contract from the Juneau Spruce Corporation, the same type of contract they had had with the Juneau Lumber Corporation for the loading of all of this water-borne commerce?

A. They didn't make any demand for a contract. The only specific demand was specifically for the work we had done in connection with that barge.

Q. In other words, didn't they tell you they had been doing all longshore work in this vicinity, and the loading of barges was really their work, and they felt it belonged to them?

A. No; that wasn't the conversation at that time. They just said that was their sentiment toward that particular barge and they felt they should have jurisdiction over everything that went over the rail onto those barges.

Q. They told you that due to the manner in which they had been working here in Juneau that they felt the loading of any type of water-borne commerce over the dock or over the bullrail, as you have intelligibly expressed it, was longshore work and they should have it?

(Testimony of George B. Schmidt.)

A. They didn't put it that way. [551]

Q. Substantially?

A. No. They didn't refer to anything as previous practice, to any previous practice at all.

Q. But you had been hiring these men for years, hadn't you? A. Yes, I have hired men.

Q. When you talked to them you knew that they were there to talk about doing the same type of work they had done for years; that is, loading barges and boats, isn't that true?

A. I wouldn't think so; no.

Q. Tell me, had you ever had a delegation of longshoremen talk to you at any previous time regarding work? A. Not of that nature.

Mr. Banfield: We object to any cross-examination except what was brought up on direct examination. He wants to go back here for twenty years.

Mr. Andersen: I have no desire to go back twenty years. I am trying to ascertain what was in the minds of the parties at the time. Many times people talk without saying a word, if people understand them. I am trying to ascertain the state of mind of the witness, that is all. When they came in there, for instance, he did not ask their names. He knew Mr. Wheat and Mr. McCammon. He didn't ask their names—he knew as soon as they said something, he got a quick grasp of the situation. Mr. Schmidt is an intelligent man.

The Court: Anything previous would not be within the [552] scope of the cross-examination.

(Testimony of George B. Schmidt.)

Q. On this occasion, how long did they discuss this matter with you?

A. Probably ten or fifteen minutes.

Q. Was it limited to procuring the work that went over the rail?

A. They objected to that particular loading, and stated they felt they should have had that and any future loading of that nature.

Q. They felt they should have the loading of any water-borne commerce, is that correct?

A. They were specific about barges.

Q. And they were specific about barges?

A. Yes.

Q. They were already doing, shall we say, commercial work, is that correct?

A. They were doing all the loading of steamships and small boats where the possession of the boat was in the name—like, for instance, the Juneau Spruce Corporation owned a boat. They didn't do that—but for outsiders where the fellows asked, we had a chance to pass that expense on to the other man, and if they asked for longshoremen we gave them to them.

Q. If you got out of the expense you didn't mind a bit? A. Right. [553]

Q. And it was billed to other people?

A. Yes.

Q. Boiling this down, they came in and talked to you and said they thought they had a right to the work of loading cargo over the rail, is that right? Is it? A. That is right.

(Testimony of George B. Schmidt.)

Q. You told them in the discussion that you would make no answer at that time, but you would discuss it with your superiors?

A. That is right.

Q. Did you thereafter discuss it with any representatives of Local 16 again?

A. No, I did not. I passed that on to Mr. Hawkins and Mr. Card.

Q. That is the last time?

A. The last I had to do with it.

Q. You discussed this general problem on only these two occasions? A. That is right.

Q. You mentioned on direct examination, as I recall it, you hired longshoremen there up until October? A. Right.

Q. That is from the time the Juneau Spruce, the new corporation, was formed—you hired longshoremen up until October—is that correct? [554]

A. That is correct.

Q. And could you tell us, or putting it this way, the longshore expense there wasn't a very great expense there, was it? A. No.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: Thank you, Mr. Schmidt.

(Witness excused.)

THEODORE NORTON YOUNGS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Will you give us your name?

A. Theodore Norton Youngs.

Q. Y-o-u-n-g-s? A. Yes.

Q. Where do you live?

A. Prince Rupert, B. C.

Q. How long have you lived there?

A. Since 1939.

Q. What is your occupation?

A. Building Supervisor for the Dominion Government and business agent for two lumber companies.

Q. Mr. Youngs, do you have any connection, business relation, [555] with the Juneau Spruce Corporation?

A. I represented the Juneau Spruce Corporation in transfering lumber from barges to railroad cars.

Q. How long have you done so?

A. From early last year, early last summer.

Q. Early in 1948? A. Early in 1948.

Q. What are your duties in that respect?

A. To arrange with the stevedoring company for transfering lumber from the barge to the railroad company.

Q. Is there only one stevedoring company?

(Testimony of Theodore Norton Youngs.)

A. Only one of that type.

Q. What is its name?

A. It is the Pacific Stevedoring Company.

Q. Do the men who do the actual unloading belong to a union?

A. The longshoremen of the I.L.W.U.

Q. Do you know the number of the local over there? A. 505.

Q. Are you acquainted with the officers of that local union?

A. I know the President and Secretary.

Mr. Andersen: Could I interrupt? I make the same objection to the testimony of Mr. Schmidt as I previously made to the other witnesses', in so far as the International is concerned. I assume the Court will again take it under submission. [556]

The Court: You mean your extra Territorial objection?

Mr. Andersen: I mean as to Mr. Schmidt and this gentleman—the same extra Territorial objection.

The Court: Both objections are overruled.

Mr. Andersen: That is, the one will be taken under submission?

The Court: The ruling will be the same as far as Mr. Schmidt's testimony is concerned, and overruled so far as the objection to this witness's testimony is concerned.

Q. What is the name of the President and Secretary of Local 505, I.L.W.U. at Prince Rupert?

A. The President is William Rothwell. The Secretary is W. A. Pilfold.

(Testimony of Theodore Norton Youngs.)

Q. Mr. Youngs, was there an occasion about August, 1948, when a barge load of lumber of the Juneau Spruce Corporation arrived at Prince Rupert?

A. There was, on August 30, 1948.

Q. There was on August 30, 1948. Did you have any duties in connection with that arrival?

A. Yes. I was supposed to transfer it, have it unloaded and load it on railroad cars for the shipment to the States.

Q. Tell what you did in pursuance to that to get the barges unloaded.

Mr. Andersen: I object to that as incompetent and [557] irrelevant.

The Court: Objection overruled.

A. I contacted the Manager of stevedoring company, Mr. Ritchie. I requested and asked to have it arranged to have it transferred—unload and transferred.

Q. What was the reply?

Mr. Andersen: To which I will object as hearsay, may it please the Court.

The Court: Objection overruled.

A. He advised me he couldn't arrange to have it unloaded.

Q. Did he advise you why?

Mr. Andersen: The same objection may it please the Court—hearsay.

The Court: Isn't that a defendant, I.L.W.U.?

Mr. Strayer: No, this is a stevedoring company.

(Testimony of Theodore Norton Youngs.)

Mr. Andersen: He is talking about a stevedoring company.

Mr. Strayer: I expect to follow this up, your Honor. This is merely preliminary.

The Court: I think what should be stated is what was done, rather than what was said, by the witness and officers of the company.

Mr. Strayer: I will withdraw the question.

Q. You made a request to unload it? Was it unloaded? A. It was not. [558]

Q. Did you make any other request of Mr. Ritchie?

A. I wrote to Mr. Ritchie as Manager of the stevedoring company asking him to have the lumber unloaded.

Mr. Andersen: I move that be stricken as self-serving and incompetent.

Mr. Strayer: It will be connected directly with members of the I.L.W.U.

The Court: What is the question?

Court Reporter: "Did you make any other request of Mr. Ritchie?" A. "I wrote to Mr. Ritchie as Manager of the stevedoring company asking him to have the lumber unloaded."

Mr. Andersen: I move that be stricken on the best evidence objection.

The Court: Objection overruled.

Q. Have you finished your answer?

A. I asked Mr. Ritchie to give me a reply in writing, which he did.

Q Did you get a reply in writing?

(Testimony of Theodore Norton Youngs.)

A I got a reply in writing from Mr. Ritchie.

Q. You talked with Mr. Ritchie personally about the reply?

A. Yes. I asked Mr. Ritchie was it definite he couldn't handle it.

Mr. Andersen: I object to that as self-serving, incompetent and immaterial. [559]

The Court: It is hearsay.

Clerk of Court: The letter dated August 31, 1948, has been marked Plaintiff's Exhibit for identification No. 11.

Mr. Andersen: The letter of what, please?

Clerk of Court: The letter of August 31, 1948. The letter addressed to Mr. D. Ritchie, Manager, Pacific Stevedoring and Contracting Company, has been marked Plaintiff's Exhibit No. 12 for identification.

Q. Mr. Youngs, I hand you Plaintiff's Exhibit No. 11 for identification, and ask you if that is the reply you got from Mr. Ritchie in response to your request. A. That is.

Q. I will hand you the document marked Plaintiff's Exhibit 12 for identification and ask you if you saw the original of that letter?

A. I did. I saw the original and asked Mr. Ritchie for a copy.

Q. Is this a copy of the letter which Mr. Ritchie furnished you? A. It is.

Q. Was that original of Plaintiff's Exhibit 12 on a letterhead? A. It was.

Q. And what was the letterhead?

(Testimony of Theodore Norton Youngs.)

A. Local 505, I.L.W.U. [560]

Mr. Andersen: I am going to object to that as hearsay, may it please the Court—incompetent, irrelevant and immaterial.

The Court: It hasn't been offered yet.

Q. Was the original of that letter, Plaintiff's Exhibit 12—you saw it in Mr. Ritchie's office?

A. I did.

Q. What was the signature?

A. The signature was W. Rothwell, the President, and W. A. Pilfold, Secretary of the Local.

Q. W. Rothwell is President of Local 505 and W. A. Pilfold is Secretary of that Union?

A. That is right.

Q. And Mr. Ritchie furnished you a copy of Exhibit 12 as a true copy? A. Right.

Mr. Strayer: I offer these letters in evidence. Do you mind if I ask another question?

Mr. Andersen: Go ahead.

Q. I should ask you where is the original of that letter of which Plaintiff's Exhibit 12 for identification is a copy?

A. I presume it would be in the file of Mr. Ritchie, the Manager of the stevedoring company.

Q. And he is in Prince Rupert? [561]

A. In Prince Rupert.

The Court: Do you object?

Mr. Andersen: Yes. In addition to my extra Territorial objection, to which the Court referred, we object that there is no sufficient foundation laid under the best evidence rule and that it is in-

(Testimony of Theodore Norton Youngs.)

competent, irrelevant and immaterial and hearsay, your Honor.

The Court: What do you claim, so far as the admissibility of the letter marked Exhibit No. 11 is concerned?

Mr. Strayer: That Exhibit 11 is admissible for the purpose of showing the general response the Juneau Spruce Corporation got to its attempts.

The Court: I overlooked the fact that this was addressed to the plaintiff. May I see them again? I think I got them twisted.

Mr. Strayer: The rule of law is that wherever conduct of any person becomes material and here stevedores' was material.

The Court: I overlooked the fact that it was addressed to the plaintiff. Will you let me see it again? The objection is overruled. They may be admitted.

Clerk of Court: They have been marked Plaintiff's Exhibits 11 and 12 in the same order as they were marked for identification.

Mr. Andersen: I believe I have the objection of [562] self-serving to Exhibit 11, your Honor.

The Court: Neither of these is from the plaintiff so it is difficult to see how either one could be self-serving. They don't purport to be made by plaintiff or its officers.

Mr. Andersen: Neither one purports to be, but the evidence may be self-serving, whether a letter is written by or to the plaintiff it may still be self-serving. Of course, both are hearsay.

(Testimony of Theodore Norton Youngs.)

The Court: The only "self" the law is concerned with, as I understand it, is one of the parties themselves.

Mr. Andersen: The Court of course understands the matter of the best evidence objection to Exhibit 12?

The Court: It has been shown that it is out of the jurisdiction of the Court.

Mr. Strayer: Plaintiff's Exhibit 11 is headed "Pacific Stevedoring and Contracting Company, Ltd., Prince Rupert, B. C., August 31, 1948. Juneau Spruce Mill, Mr. T. Norton Youngs, agent, Prince Rupert, B. C. Dear Sir: We thank you for your letter of today's date, in which you asked us to unload a scow load of lumber now docked at the Ocean Dock. We have advised our longshoremen's Union of the labor condition under which this scow was loaded at Juneau. Our longshoremen's union wired the International Longshoremen's & Warehousemen's Union Head Office, Vancouver, B. C., [563] of this current labor situation at Juneau. Our Local Union has been told by their Head office of Vancouver to refrain from unloading until the trouble between the Longshoremen's Union at Juneau and the Mill at Juneau has been settled. We deeply regret our inability to unload this lumber under these conditions. However, if and when your labor troubles are settled, we will be only too pleased to handle any shipments you may wish to ship through the Port of Prince Rupert. Yours truly, Pacific Stevedoring and Con-

(Testimony of Theodore Norton Youngs.)

tracting Company, Ltd., per A. D. Ritchie, Manager." Plaintiff's Exhibit 12 is headed "I.L.W.U. Local 505-CIO, P.O. Box 531, Prince Rupert, B. C., Mr. D. Ritchie, Manager Pacific Stevedoring and Contracting Co., Prince Rupert, B. C. Sir: This is to advise you that the membership of the above Association will not become involved in the labor trouble in connection with the recently arrived scowload of lumber from Juneau, Alaska. On advice from our headquarters in Vancouver, the matter is between the Juneau Spruce Corporation and the longshoremen of Juneau, Alaska, also with the International Woodworkers of America. Yours truly, President W. Rothwell, Secretary, W. A. Pilfold."

Q. Mr. Youngs, upon receipt of this information, I will ask you whether you communicated that information to the Juneau Spruce Corporation? A. I did. [564]

Q. Now, thereafter did you have occasion to talk with anyone—strike that. Was the barge unloaded there at Prince Rupert? A. It was not.

Q. Do you know where it went from there?

A. On instructions to me, I advised the Captain to take it to Tacoma.

Q. Was it still loaded when it left Prince Rupert? A. It was.

Q. Was there any time thereafter, after August 31, 1948, that you talked with anyone in regard to the possibility of unloading barges of lumber at Prince Rupert?

(Testimony of Theodore Norton Youngs.)

A. Yes, on September 30, 1948.

Q. And did you receive a call from anyone on that date?

A. I received a telephone call from the Secretary of the Prince Rupert Chamber of Commerce, and he asked me to attend the meeting.

Q. Where? A. At the Secretary's office.

Q. Who was at the meeting?

A. The Secretary introduced me to Mr. Boochever of Juneau. Mr. A. D. Ritchie, the Manager of the Pacific Stevedoring Company was there, and he introduced me to Mr. John Berry, International representative of the I.L.W.U.

Q. Do you know who Mr. Boochever was? [565]

A. Mr. Boochever was introduced as an attorney from Juneau representing the Juneau Spruce Corporation.

Q. Did they tell you what the meeting was about?

A. Mr. Boochever asked Mr. Berry if Local 505 in Prince Rupert could handle shipments from the Juneau Spruce Corporation.

Mr. Andersen: I am going to object to all of this, may it please the Court. In so far as the International is concerned there is no foundation at all, may it please the Court, and it is hearsay so far as these defendants are concerned.

The Court: Objection overruled.

A. Mr. Berry replied that they could not handle it while the present labor trouble was on in Juneau and stated that he had—it was on his in-

(Testimony of Theodore Norton Youngs.)

structions that the Local was not handling it. Mr. Boochever asked him why and why he had thus instructed the Local, and Mr. Berry stated that his information was to the effect that the Juneau longshoremen weren't getting work they were supposed to have and were losing one-third of their income. Mr. Boochever then asked him where he got that information, and he said that he got it from his San Francisco headquarters. He said that the Local would not be able to unload lumber from the Juneau Spruce while the trouble was on in Juneau.

Q. Was that all the conversation? [566]

A. I believe so.

Q. Do you remember any mention in the conversation of Vern Albright?

Mr. Andersen: Beg pardon?

Q. Was there any mention in the conversation of Vern Albright?

Mr. Andersen: I object to that as leading and suggestive, may it please the Court.

The Court: Objection overruled.

A. Mr. Berry stated that Vern Albright phoned him from Prince Rupert when the barge was there on August 30, and he, Berry, told Mr. Albright he didn't want any picketing in Prince Rupert. Mr. Albright said—Berry said it was Mr. Albright said in a joking manner if any picketing was done he, Albright, would do it himself.

Q. Is that substantially all the discussion at that time? A. It was.

Q. Did you talk with anyone else that day in

(Testimony of Theodore Norton Youngs.)

an effort to find out if lumber could be moved through Prince Rupert?

A. I introduced Mr. Boochever to Mr. Pilfold, the Secretary——

Q. The Secretary of Local 505, I.L.W.U.?

A. Yes.

Q. Where was that conversation held?

A. On the street in Prince Rupert.

Q. Will you tell us what took place at that conversation?

A. I introduced Mr. Boochever as being from the Juneau Spruce [567] and being anxious to see lumber go through Prince Rupert again.

Mr. Andersen: The same objection to this line of questioning, may it please the Court.

The Court: Mr. Pilfold was Secretary of the I.L.W.U.? A. Yes.

The Court: Objection overruled.

A. And Mr. Boochever asked Mr. Pilfold if the Local in Prince Rupert would handle further shipments. Mr. Pilfold said they would not. He said, at the time the barge was there on August 30, Mr. Guy—Joe Guy—had spoken to Mr. Pilfold in Prince Rupert and to the members of the Local, and had told them that the longshoremen in Juneau were not getting work they considered they were entitled to, and told them they had been told by the management of the original Juneau Lumber Company that the same arrangement would continue, as they had before, would continue when

(Testimony of Theodore Norton Youngs.)

the new company took it over, and such hadn't been the case, and they hadn't gotten work they thought they were entitled to. After this conversation Mr. Pilfold said Prince Rupert would not handle lumber from Juneau Spruce while the picket line was on the lumber mill in Juneau.

Q. That conversation about work done for the former company, as I understood it, Pilfold understood that was a statement made by Joe Guy? [568]

A. He did.

Q. Did you talk with anybody else in Prince Rupert that same day?

A. I also introduced Mr. Boochever to William Rothwell, the President of the I.L.W.U. Local.

Q. Will you relate the conversation with Mr. Rothwell?

A. It was along similar lines. Mr. Boochever asked if the Local could handle lumber from Juneau Spruce. Mr. Rothwell said they could not under present conditions while the picket line was on. He said while the barge was in Prince Rupert on August 30 Mr. Albright and Mr. Guy both talked to the Local and had advised them of the picket line here and that they felt they weren't getting a fair treatment in the work and that they had lost approximately one-third of their income through not getting this work.

Q. Was that all the conversation with Mr. Rothwell? A. I believe so.

Q. Was Mr. Rothwell asked regarding his opinion of future unloading of shipments?

(Testimony of Theodore Norton Youngs.)

A. He said they wouldn't unload shipments until they got word from headquarters that the trouble was cleared up.

Q. Did he say what headquarters?

A. Vancouver headquarters.

Q. Mr. Berry's office?

A. He did say Mr. John Berry, their representative, as I [569] understood it.

Q. Did you ever again talk to Mr. John Berry?

A. Over the telephone, yes.

Q. When was that?

A. Last week from Juneau.

Q. Do you recall the date?

A. Last Thursday, whenever that was; the 28, April the 28.

Q. You put in a long distance call to Mr. Berry?

A. I asked central to get me the office of the International Representative of the I.L.W.U. in Vancouver, British Columbia.

Q. And did you get him?

A. Central called me to the phone while they were checking with Vancouver, and I heard the Vancouver operator give them the telephone number which she said was that office's telephone number. I was then connected.

Q. Did you talk to Mr. Berry?

A. I asked if that was the office of the International Representative of the I.L.W.U., and he said it was.

Mr. Andersen: I object to that as hearsay.

(Testimony of Theodore Norton Youngs.)

Mr. Strayer: It is not hearsay.

The Court: Objection overruled.

A. He said it was his office, and I asked who the International [570] Representative was. He said it was Mr. John Berry.

Mr. Andersen: Same objection, may it please the Court.

The Court: Overruled.

A. I asked if Mr. Berry was there. He said he was not there, that he had left for New Westminster, the office of the New Westminster Local, and he gave me the phone number which I had central call, and the New Westminster office answered and said that Mr. Berry, the International Representative, had been there but had left for his home.

Mr. Andersen: I move that be stricken as hearsay, may it please the Court.

The Court: It is all with one of the agents of the defendant. Motion denied.

Q. Go ahead, Mr. Youngs.

A. After about an hour's delay I contacted Mr. Berry's home, the phone number given me by the office in New Westminster. Mr. Berry answered the phone, and I asked him was that Mr. John Berry, the International Representative. He said it was. I asked him if he remembered meeting me in Prince Rupert last September. He said he did. I introduced myself over the phone, and he remembered me. I asked what the status of lumber would

(Testimony of Theodore Norton Youngs.)

be going through Prince Rupert now from Juneau Spruce, and he said he had heard—— [571]

Mr. Andersen: It is understood my same objection goes to all of this your Honor?

The Court: Yes.

A. He said he had heard of the National Labor Relations Board's ruling, but that Vern Albright said it didn't make any difference, that the situation was the same. I asked about his own ruling or his headquarters' ruling on it. He said he would call his head office in San Francisco that night and attempt to find out and contact me here in Juneau next day.

Q. Was that all the conversation?

A. That was all.

Q. Did he call you next day?

A. I had to return to Prince Rupert without hearing from him at all, so in Prince Rupert on Monday this week, May the 2nd, I called the office of the International Representative in Vancouver of the I.L.W.U. Mr. Berry answered the phone, and I asked what he had heard from the San Francisco office and was calling him since I hadn't heard from him. He said he had just then got word from San Francisco from his office.

Mr. Andersen: My same objection runs to all this, I assume, your Honor?

The Court: Yes.

A. He said the situation was still unchanged and Local 505 [572] in Prince Rupert could still not handle the lumber.

(Testimony of Theodore Norton Youngs.)

Q. Was that all the conversation at that time?

A. I believe it was.

Q. When you called the second time, from Prince Rupert, did you look up the telephone number in the——

A. In the Vancouver directory.

Q. How was it listed?

Mr. Andersen: I object to that as hearsay.

The Court: Objection overruled.

A. Regional Office of the I.L.W.U. in Vancouver.

Q. Is it I.L.W.U. or is it spelled out?

A. Spelled out.

Q. How?

A. International Longshoremen's & Warehousemen's Union.

Mr. Strayer: The plaintiff offers to show that a copy of the Vancouver telephone directory is not available in Juneau, in case counsel wants to object as not being the best evidence. You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. All these places you have mentioned except Juneau are in Canada, aren't they?

A. They are.

Q. When did you first meet Mr. Boochever?

A. September 30, 1948.

Q. Is that the first time you met him?

A. It was.

(Testimony of Theodore Norton Youngs.)

Q. Do you know if he came particularly to see you?

A. I don't believe so; no. I understand he came down to see if he could get the lumber moving through Prince Rupert.

Q. Where did you meet him?

A. I was invited in the Secretary of the Chamber of Commerce's office to meet him.

Q. Did you spend one day or more than one day with him?

A. Just part of one day, I believe.

Q. You introduced him to how many people?

A. I believe I probably introduced him to four or five.

Q. You have mentioned about three here you introduced him to. Who else did you introduce him to?

A. I introduced him to a lawyer, Mr. Harvey.

Q. Who is Mr. Harvey?

A. An attorney in Prince Rupert.

Q. Who does he represent, if you know—anybody concerned in this case?

A. Not that I know of.

Q. To whom else did you introduce him?

A. I couldn't say for sure. I do know I met a couple friends of mine; Mr. Boochever being with me, I introduced him. [574]

Q. You introduced him to Mr. Berry?

A. No. I didn't know Mr. Berry before the meeting.

(Testimony of Theodore Norton Youngs.)

Q. Did you introduce him to the Secretary and President of this Local? A. I did.

Q. And to anybody else you think was connected with the Union? A. No.

Q. When you introduced him to Mr. Rothwell, what did you say?

A. I introduced him as Mr. Boochever, an attorney from Juneau representing the Juneau Spruce Corporation.

Q. And the same with respect to the other gentlemen of the Local there? A. Yes.

Q. And how long did they talk, if you know?

A. I imagine five or ten minutes.

Q. Was all this at this Chamber of Commerce luncheon?

A. It wasn't a luncheon; it was a previous meeting and was in the man's office.

Q. Whose office?

A. The Secretary of the Chamber of Commerce.

Q. Is that where you introduced Mr. Boochever to Mr. Rothwell and to the other gentlemen, the Secretary of the Union?

A. No; on the street in Prince Rupert. [575]

Q. They happened to be walking along the street?

A. In the case of Mr. Pilfold, yes. In the case of Mr. Rothwell, we had gone to the dock to see Mr. Rothwell.

Q. You took Mr. Boochever there yourself?

A. Yes.

(Testimony of Theodore Norton Youngs.)

Q. Did you make it a point to take him down there?

A. He wanted to meet Mr. Rothwell; yes.

Q. When he met Mr. Rothwell, are you certain you told him he was an attorney from Juneau?

A. Definitely.

Q. Do you know if Mr. Boochever gave him a card?

A. I don't believe so. I am not sure of that.

Q. Did Mr. Boochever participate in the conversation?

A. The conversation was between Mr. Boochever and these gentlemen; not myself.

Q. And you just stayed there? A. I did.

Q. At that time did you have the letters which have been introduced in evidence?

A. Yes; I had them in my file.

Q. You didn't have them with you, I mean?

A. No.

Q. Then, in the presence of Mr. Boochever, you didn't show them to any men from the Union?

A. No. [576]

Q. As I understand the substance of this conversation, that you heard, rather between Mr. Boochever and the two officials, as you say, of the Local there in Prince Rupert, was that there was a strike up here in Juneau, and the longshoremen there at Prince Rupert wouldn't handle the lumber on that scow; is that the gist of it?

A. Yes.

Q. Did I also understand you to say somebody

(Testimony of Theodore Norton Youngs.)

told you a Mr. Guy had come down and talked to the longshoremen and said in effect that the longshoremen up here were being cheated by the Juneau Spruce Company out of work they had always had and they had a picket line in front of the place?

A. These gentlemen told Mr. Boochever that in my presence.

Q. On either one or two occasions they told Mr. Boochever in your presence that in effect they were locked out by the Juneau Spruce Company because they were being cheated out of work they had always had from the Juneau Spruce Company as well as its predecessor the Juneau Lumber Company; is that correct?

Mr. Strayer: I object. That is not a correct statement of what the witness' testimony was, your Honor.

Mr. Andersen: Counsel knows this is cross-examination.

Mr. Strayer: I realize that very well, but it doesn't justify counsel in misquoting the testimony, your Honor. [577]

Mr. Andersen: I am not misquoting.

The Court: It might be that he misquoted it, but perhaps unintentionally. The witness undoubtedly can take care of himself. Objection overruled.

Q. Do you want me to repeat the question?

A. One part I don't remember saying is that they had the work from the Juneau Spruce. As I remember, they had the work from the Juneau Lumber Company, I believe.

(Testimony of Theodore Norton Youngs.)

Q. He was quoted as having said they always had the work from the Juneau Lumber Company and the Juneau Spruce was trying to cheat them out of it; is that part of it?

A. I don't know that I said "trying to cheat them out." They said it was work they were entitled to.

Q. I thought you used the word "cheat."

A. I may have.

Q. I may have been mistaken. Let's start again. One of these men down there told Mr. Boochever in your presence that Mr. Guy talked to some of the longshoremen and told them they had always done this longshore work for the Juneau Lumber Company; is that correct? A. Yes.

Q. And that they claimed the work was their work; is that correct? A. Yes.

Q. And that they felt the Juneau Spruce Company was cheating [578] them out of work they should have?

A. In effect cheating them—or depriving; I don't know what word—of the work.

Q. Cheating or depriving—I happened to write the word "cheating" down. That completed your statement, didn't it? A. I believe so.

Q. In other words, that was what was substantially said on the two occasions where Guy was quoted; is that correct? Or was Guy only quoted—— A. Both of them quoted Guy.

Q. Both of them quoted Guy. On both occasions

(Testimony of Theodore Norton Youngs.)

what I have just said was substantially what Guy was having been quoted as saying——

A. Substantially so.

Q. In Prince Rupert?

A. In Prince Rupert; yes.

Mr. Andersen: I think that is all.

Mr. Strayer: That is all, Mr. Youngs.

(Witness excused.)

Mr. Banfield: If the Court please, this is an out of town witness that we would like to call out of order at this time for the purpose of showing prices

Mr. Banfield: No; what it would have been sold had been produced in 1948, and the witness is out of turn, of course, because we haven't laid a proper foundation here for the production of these amounts of lumber in these cases, but it is purely for the convenience of the witness.

The Court: You mean the market price rather than what it was sold at?

Mr. Banfield: No; what it would have been sold at if it was produced and not the market price will be discussed here by a man under contract to buy them.

The Court: Is that a copy of an exhibit marked for identification?

Mr. Banfield: No, your Honor. This is entirely new.

The Court: You may proceed.

Mr. Banfield: I would like to mark this.

MELVIN W. PRAWITZ

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. I would like the witness to state his name.

A. Melvin W. Prawitz.

Q. Where do you reside?

A. Portland, Oregon.

Mr. Banfield: I would like to have this marked for identification.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 13 for identification.

Q. Mr. Prawitz, what is your occupation? [580]

A. Lumber salesman and buyer.

Q. And for whom do you work?

A. Dant & Russell, Incorporated.

Q. And where is the main office of Dant & Russell, Incorporated?

A. 711 Equitable Building, Portland, Oregon.

Q. Is that the office in which you work?

A. Yes.

Q. Mr. Prawitz, we wish to identify Dant & Russell here for reasons which will be obvious in a short time. Will you tell us what kind of an organization it is, and what it does, and how extensive its operations are?

Mr. Andersen: Did you say "expensive" or "extensive"?

Mr. Banfield: "Extensive."

(Testimony of Melvin W. Prawitz.)

A. It is a lumber brokerage firm also acting as sales agent for several mills. They also handle firtex, doors and plywood.

Q. And in what area do you buy lumber?

A. We buy lumber from northern California, Oregon, Washington and Alaska.

Q. And do you—where do you sell this lumber?

A. Anywhere in the United States, also for export.

Q. Where do you maintain offices—for the distribution of this lumber—do you have any branch offices?

A. Yes, there are sales agencies in San Francisco, Los [581] Angeles; Columbus, Ohio; Newark, New Jersey; Philadelphia, Pennsylvania; Boston, Massachusetts; Rensselaer, New York, and Albany, New York, also——

Q. Permit me to stop you there, Mr. Prawitz. Are those sales agencies of Dant & Russell, Incorporated, directly under their control or management?

A. Yes, they are under their control.

Q. Do you have any other method of disposing of lumber except through these particular sales agencies and offices?

A. Yes; we have commission salesmen. Some are exclusive for Dant & Russell and others are used by other mills and brokerage firms.

Q. Where do you find those, generally speaking?

A. They would be throughout the United States.

(Testimony of Melvin W. Prawitz.)

Well, they might possibly miss a few states, but we have them pretty well represented throughout the United States.

Q. Do you have any connection in foreign countries? A. Yes.

Q. What do you have abroad?

A. They are also actually commission agents. We have them in London, also we work with some in Europe, Australia and the Hawaiian Islands.

Q. How much lumber does Dant & Russell dispose of in any period of time which you can name?

A. I would say the average rail shipments are approximately [582] one hundred, or I mean one thousand cars per month, and then there is also Atlantic Coast water shipments and export shipments—that would total approximately the same as the rail shipments that would be.

Q. Is there any agreement between Juneau Spruce Corporation and Dant & Russell, Incorporated?

A. A verbal agreement that we act as their sales agent.

Q. Is that customary for you to act on a verbal agreement? A. Yes.

Q. And would you tell us how this agreement operates?

A. We have been handling their sales——

Mr. Andersen: I didn't hear that.

A. We have been, and do, handle their sales outside of Alaska; in other words, anything going to the States or anywhere we see fit to sell it.

(Testimony of Melvin W. Prawitz.)

Q. Are you the exclusive agent for outside sales?

A. Yes.

Q. Pardon me for interrupting—how does it operate? Just go ahead, explain the methods, what you do in buying and selling this lumber.

A. Actually, we operate in one of two ways. We offer stocks for sale the same as for other people. When we receive an order it is subject to our confirmation and we give the mill a chance to confirm the order, and then it becomes a formal order, and then we act or sell on a [583] commission basis.

Q. That is one method? A. Yes.

Q. Do I understand you to say that you wait for some agency of Dant & Russell, Incorporated, or some commission agent to get an order from some customer—we will say in Albany—and he transmits the order to your office, and you transmit it to where, to do business with the Juneau Spruce? Where do you have to send that order? Do you do it in Portland or Coos Bay or where?

A. We write an order in Portland and send it to Juneau.

Q. And that shows the prices? A. Yes.

Q. And quantity? A. Yes.

Q. Grades? A. Yes.

Q. When an order gets to Juneau what is done?

A. They ship on that order.

Q. Do they ship before they agree with you to sell the lumber?

(Testimony of Melvin W. Prawitz.)

A. Not on that particular car. We have——

Q. I mean on this particular type of a sales deal now.

A. No; they wouldn't ship until they received the order.

Q. Would they confirm the order before shipping? In other [584] words, do they have an opportunity to refuse that offer? A. Yes.

Q. Then their acceptance or rejection is transmitted to you, is that right? A. Right.

Q. And you have to go on back to the customer?

A. Yes; or place it elsewhere.

Q. What other type of arrangement do you have with Juneau Spruce, if any?

A. We, in some cases, we have waited for an inventory and sold the stock in transit.

Q. Mr. Prawitz, your terms in the trade are not quiet intelligible to us, such as you say "wait for inventory." We don't know what that means.

A. If they have accumulated stock and do not have orders for that stock and decide they want to ship it, we tell them to go ahead and ship and they send a tally, or list of grades and footages, and we sell from that list while the stock is in transit to the States, or wherever it might be going.

Q. In that event, if the sale is on the second plan, do you always tell them at what prices you can sell before you can sell?

A. Yes; we give them a chance to turn down the offer or order the same as on any other business. [585]

(Testimony of Melvin W. Prawitz.)

Q. If the Juneau Spruce Corporation were to have offered Dant & Russell for sale during the year 1948 fifty million feet of lumber of the kind which is produced in Southeastern Alaska and in the grades which are produced here, would you have been able to dispose of that lumber?

A. Yes.

Mr. Andersen: To which I will object and move it be striken, a sufficient foundation not having been laid.

Mr. Banfield: We shall ask the witness how he knows.

The Court: You can ask him as to the state of the market from which that could be inferred. The objection is overruled in the meantime.

Q. Did you answer the question? A. Yes.

Q. What was your answer?

A. Yes; it was yes.

Q. Would fifty million feet of lumber be a very large percentage in your total business?

A. No. It would be approximately—oh, I should say, eight or ten per cent.

Q. Now, what was the state of the lumber market in 1948, as compared to, we will say, 1947?

A. The lumber market in 1948 prior to, I think, September—some of the grades started falling off a little—but the market prior to that time was at its peak. In comparison [586] with 1947, I would say after July, 1947, until September or October, 1948, was a peak market. In other words, the stock——

(Testimony of Melvin W. Prawitz.)

Q. What do you mean, "peak market"? Do you mean demand?

A. Demand and price.

Q. Demand and price? A. Yes.

Q. In other words, how readily would this lumber have moved on the market up to September, 1948?

A. Well, very readily. In other words——

Mr. Andersen: Same objection to all of this, may it please the Court—not sufficient foundation having been shown.

The Court: Objection overruled.

Q. Was it a sellers' market or a buyers' market?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

A. A sellers' market.

Q. By that, what do you mean?

A. In other words, we as lumber salesmen, were able to get our price for the material and it wasn't too hard to find the people interested in buying the lumber.

Q. What happened in the market after September of 1948?

A. Well, the lower grades of lumber in September showed a [587] slight decline. In October it showed a much greater decline.

Q. Let me stop you there. How about in the medium and higher grades of lumber?

A. Not so much—I think possibly November was the larger—so in the upper grades, and then it more or less leveled off from that time on.

(Testimony of Melvin W. Prawitz.)

Q. And continued at that level until what time?

A. It is still about the same.

Q. Mr. Prawitz, how long have you been with Dant & Russell?

A. July 28, 1946, is when I started with them.

Q. And have you been in this same position all the time?

A. No; I don't know just how you mean that.

Q. Since you began with Dant & Russell, do you occupy the same position?

A. No. I was buying and selling, but different types.

Q. What types have you bought and sold?

A. I started in what we call small mill production, which was rough lumber, and then yard items, and then specialties, such as spruce, cedar, hemlock, etc.

Q. In other words, you are now buying and selling specialties, is that it? A. Yes.

Q. Did that include the particular type of lumber produced in Southeastern Alaska? [588]

A. Yes. In other words, the policy set down is that they do handle spruce.

Q. Before you went with Dant & Russell, Incorporated, would you tell us briefly your experience in the lumber industry?

A. How far back.

Q. Say, when you quit school and briefly outline it—I don't want to take very long.

A. I actually started in lumber in about 1932,

(Testimony of Melvin W. Prawitz.)

in Anacortes, Washington. I worked in mills, and then about 1940 I went to work for McDonald & Gattie Company, who were spruce lumber brokers, and I inspected for them, and did some buying, and later on I ran a remanufacturing plant for them, after which I worked for probably—I think it was 1943 I went to work for the Spruce Lumber & Veneer Company at Vancouver, also a spruce operation, and this was mainly in spruce, aircraft and clears, and the aircraft program faded, after which I went to work for the Pacific Lumber Inspection Bureau, from then—that was probably, I think it was 1945 and '46, until I went to work for Dant & Russell.

Q. Mr. Prawitz, what is the Pacific Lumber Inspection Bureau, which will come into the case later?

A. Well, it is an independent inspection service, in other words. I don't know just how to explain it. They are [589] the official graders for mainly export lumber, although they do also grade for domestic shipments.

Q. The mill operator will hire a P.L.I.B. man to certify his lumber as to grade?

A. That is right.

Q. Does that certificate mean anything in the trade? A. Yes.

Q. What does it mean?

A. The grading is final and you could call for re-inspection.

(Testimony of Melvin W. Prawitz.)

Q. By whom? A. A supervisor.

Q. Of whom? A. P.L.I.B.

Q. Are there inspections?

A. Once in a while there might be a question.

Q. By supervisors in the same organization?

A. The same organization or West Coast Bureau of Grades.

Q. Mr. Prawitz, are you familiar with the prices at which the various types, grades, sizes, qualities of lumber produced in Southeastern Alaska could have been sold? Do you know what the market prices were for lumber during each month?

Mr. Andersen: That assumes facts not in evidence. No foundation has been laid.

Mr. Banfield: I am asking if he knows. [590]

Mr. Andersen: That is getting into that objection again, if somebody is asking and somebody would answer "I know how," or I mean say "Yes," I don't know where he would get the information. It is the same idea.

The Court: It might be a guess in the case you cite, but it appears here that it would be a little more than a guess.

Q. Now, would you, Mr. Prawitz, know the prices at which the various grades, etc., could be sold? A. Yes.

Q. That is in response to my full question that I asked a moment ago? A. Yes.

Q. Did you prepare this schedule marked Plaintiff's Exhibit No. 13 for identification which I now show you? A. Yes.

(Testimony of Melvin W. Prawitz.)

Q. And where did you prepare that?

A. In the Portland office.

Q. Of Dant & Russell, Incorporated?

A. Yes.

Q. And you had access to all your records at that time? A. Yes.

Q. You have access to all records of Dant & Russell, Incorporated? A. Yes. [591]

Q. And this is prepared from your own knowledge and transactions that took place?

A. Yes.

Q. Now, Mr. Prawitz, if fifty million feet of lumber had been offered to you in 1948 and 1949, that is, from April, 1948, to the end of March, 1949, could you have disposed of it and sold it for the prices stated for the various grades, qualities, sizes and in the months set forth in this schedule as shown on this Exhibit 13 for identification?

Mr. Andersen: I object. It is purely speculative and an insufficient foundation has been laid, and it is incompetent, irrelevant and immaterial, may it please the Court.

The Court: You might ask him as to what he sold during that period, during that year—whether he sold that kind of lumber.

Q. Mr. Prawitz, did you sell the kind of lumber shown on this exhibit during 1948? A. Yes.

Q. Did you sell any quantity?

A. We didn't sell the quantity, we sold it in other species. The quantity of spruce wasn't available, due to the market being a sellers' market.

(Testimony of Melvin W. Prawitz.)

Q. In other words, you mean to say you didn't have enough of it to sell? [592]

A. That is right.

Q. But you did sell some? A. Yes.

Q. Spruce? A. Yes.

Q. Hemlock? A. Yes.

Q. Cedar? A. Yes.

Q. Do you know what the prices and the demand —do you know what the demand was and what the price was that the public would pay for these goods?

A. Yes.

Q. During all these months? A. Yes.

Q. And for all these grades, and sizes?

A. Yes, that is right.

Q. Do you know of your own knowledge whether you could have sold fifty million feet of lumber from Southeastern Alaska? A. Yes.

Q. Grown and produced here, at the prices shown on this sheet? A. Yes.

Mr. Andersen: The same objection, may it please the Court. [593]

The Court: The same ruling.

Q. Could you have, or could you not?

A. We could.

Mr. Andersen: The same objection.

The Court: The same ruling.

Mr. Banfield: So I will make sure of the last question, I will put it in a different form.

The Court: I thought you followed it up. That objection was overruled after that.

(Testimony of Melvin W. Prawitz.)

Mr. Banfield: Will you read the last question and the last answer please?

Court Reporter: "Could you have, or could you not?" A. "We could."

Q. Now, Mr. Prawitz, how definite are these prices, how certain are you that you could have sold these quantities at these prices?

Mr. Andersen: I object to that as calling for the conclusion and opinion of the witness and a sufficient foundation not having been laid.

The Court: It might be if it was future, but not for past. Objection overruled.

A. Those prices are conservative. We are certain we could have sold the lumber at those prices shown on that schedule.

Mr. Banfield: That is all. You may cross-examine. [594]

Cross-Examination

By Mr. Andersen:

Q. Mr. Prawitz, are you being paid for your testimony here? A. Being paid?

Q. You heard the question, didn't you? Didn't you hear my question? A. Yes, sir.

Q. I asked you if you were being paid for your testimony here. Can't you answer that simply and shortly? Do you have to hesitate to answer the question?

Mr. Strayer: If the Court please——

Q. Don't look at counsel. Look at me.

Mr. Strayer: I object to counsel's tactics.

(Testimony of Melvin W. Prawitz.)

Mr. Andersen: I want the record to show I asked a simple little question.

The Court: You asked if he is being paid for his testimony. That is rather ambiguous. The fact that the witness hesitated would hardly justify any intemperate attitude toward him. You may answer the question.

A. I don't understand the question.

Q. Have you received any money for coming here? A. No.

Q. Have you received any money for compiling this data?

A. My regular salary—it is part of my work. It would be Dant & Russell income. [595]

Q. Have you come up here to testify without a fee of any kind? A. Without what?

Q. Without a fee of any kind?

A. My normal salary.

Q. Do you have any understanding with the Juneau Spruce Corporation that you will be compensated for your work here?

A. No, I haven't.

Q. Do you know if anybody else made arrangements to have you compensated for coming up here?

A. How that will be handled, I don't know.

Q. When I asked you first if you were being paid for coming up here, you said "What," didn't you? A. I didn't understand your question.

Q. Is that the only thing you meant? Don't you understand what payment is? A. Certainly.

(Testimony of Melvin W. Prawitz.)

Q. If a person asks you a question, "Have you been paid for something?" don't you understand what is meant by that? Don't you understand what is meant by that question?

A. That takes in a lot of territory.

Q. Don't you understand what is meant by that question, "Have you been paid for that?"—can't you understand that, sir?

A. Not the way it was put. [596]

Q. You didn't understand the way it was put when I asked the question, "Have you been paid for testifying?"—you don't understand that?

A. I do now.

Q. I had to explain all this before you understood what was meant by a simple question, "Have you been paid for testifying?"

A. That is right.

Q. And you say you drew this compilation; and you don't understand a simple question, and you drew this compilation? A. I drew that.

Q. Did you bring any records of any kind?

A. No, sir.

Q. Did you know that you were going to testify here today? A. That is right.

Q. Did you talk this testimony over with anyone before you came here? A. Well, I——

Q. Can't you answer yes or no? A. Yes.

Q. Did you talk this testimony over with anyone before today? A. Yes.

Q. With whom? A. Fellow workers.

(Testimony of Melvin W. Prawitz.)

Q. That is, of course, just fellow workers?

A. And I have naturally talked about the case since I have been here.

Q. You have to hesitate to answer those simple questions?

Mr. Strayer: Your Honor, I would like the record to show and counsel knows that attorneys generally talk to their witnesses before they testify, and I object to counsel's bullying tactics.

Mr. Andersen: I am not bullying.

Mr. Strayer: He doesn't give him time to answer and then jumps on him for not answering in a hurry.

The Court: I think the manner of questioning is hardly justified in view of the nature of the testimony asked for. It is not as if we were on a vital issue.

Mr. Andersen: You are probably right, your Honor.

Q. Have you discussed this case with anybody else? A. Yes.

Q. With whom? A. Fellow workers.

Q. Fellow workers? A. Yes.

Q. What do you mean by fellow workers?

A. The men I work with at Dant & Russell.

Q. Of course you haven't discussed it with these gentlemen here, have you? [598]

A. Yes, I have.

Q. Oh, you have also discussed it with them. You haven't brought any records with you, have you? A. No.

(Testimony of Melvin W. Prawitz.)

Q. Can you tell me how many feet of lumber that you sold, if any, for the Juneau Spruce Lumber Company from May 1, 1947, to April 30, 1948?

A. No. I don't know exactly.

Q. Do you know if you sold any?

A. Yes, sir.

Q. But you don't know exactly?

A. I don't know the exact footage; no.

Q. Did you check it?

A. We keep a record of it.

Q. Did you check it before you came up here to testify? A. No.

Q. As to how much was actually sold by you?

A. No, I didn't.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: That is all, Mr. Prawitz. Thank you very much.

(Witness excused.)

(Whereupon the jury was duly admonished and the trial was adjourned until ten o'clock a.m. May 6, 1949, reconvening as per adjournment with all parties present as heretofore, and [599] eleven of the twelve jurors present in the box; whereupon the Court directed the Marshal to inquire into the absence of the juror Mrs. Hunsbedt, and thereupon the trial proceeded as follows:)

Mr. Banfield: I think we have a legal matter we can dispose of while we are waiting for the absent juror, in the absence of the jury.

The Court: The jury may retire until called.

(Whereupon the jury retired from the court-room.)

Mr. Banfield: If the Court please, counsel for defendants have indicated they would like to call Mr. Schmidt this morning as a witness for the defendants out of turn, in order to accomodate Mr. Schmidt, who will have to be gone from Juneau from now on. We have consented. In asking to call him out of turn they stated that they intend to show past practice at the Juneau Lumber Mills, and no doubt in the course of the presentation of testimony the question is going to come up as to whether or not that is admissible in evidence, and we intend to resist any presentation of evidence as to what the Juneau Lumber Mills did, unless counsel can offer to prove and make an offer of proof that they will show a contract binding upon the Juneau Spruce Corporation to employ, or to continue to employ, the members of Local 16. We are sort of anticipating the evidence here, and we realize this witness is being called out of turn, and there may be [600] some evidence that the Juneau Spruce Corporation is bound by a contract with Local 16 to hire the members of that organization or after hiring—or, and after hiring them, to continue. If such an offer is made it might be admissible, and if not, it will not be admissible. We would like to take that up. It will involve argument on a legal question.

Mr. Strayer: I would like to add that we understand the defense is built on past practice, so determining this now we may shorten the case, looking toward the time the defense starts putting on its own testimony.

The Court: Do you want to state your side?

Mr. Andersen: I believe from what counsel said, it is rather clear. The witness Mr. Schmidt is a witness who has already been here, of course. He was a manager or something of the Juneau Lumber Company and worked for plaintiff in this. It has even been raised in this case whether or not there was a written contract or contracts between the Juneau Lumber Mill and Local 16. As a matter of fact, your Honor will recall the testimony of Mr. Flint, here. He said after some sort of investigation had been made he was permitted to answer, over objections, that as a result of the investigation he determined the statements were false. We have here a contract specifically between the Juneau Lumber Mills and Local 16, may it please the Court, which we will offer in evidence at the appropriate time. The witness will also [601] testify that the same hiring practices will carry over to Juneau Spruce as had obtained under Juneau Lumber. Now, of course, a contract may rest in writing or may rest in parol and from that simple statement, may it please the Court, I think the scope of the direct examination would be as broad as that implies. In other words, we are going to show the written contract which was adopted between the parties; that is, the Juneau Spruce——

Mr. Banfield: May it please the Court, I think counsel has left out any offer of proof as to one necessary step. He might very well offer this written contract with the Juneau Lumber Mills and argue that he will offer proofs that the same practices continued as to hours, wages and conditions of employment. That would not bind the employer, Juneau Spruce Corporation, to keep these men in this employment.

The Court: When you say "these men" you mean longshoremen?

Mr. Banfield: Longshoremen. No obligation is implied to keep them in the employer's employment unless the Juneau Spruce Corporation had in some way or other obligated itself to continue the employment of longshoremen. It is just as simple as this: that if you have—if you buy out a grocery store and employees are working there, and you continue and [602] go on employing the same persons, but that does not prevent you from discharging those employees and hiring others. There is nothing in this act which prohibits you from doing that. There is nothing unlawful or illegal about it. If the Court will notice the language of the statute under which we are suing here, it is apparent Congress had no intention that you continue anyone in employment unless, of course, you have an agreement to continue them in their employment; then you are bound, but so is anyone else in any other contractual relation with an employee. This section simply states that it is unlawful for a labor

organization to engage in or to induce a strike or to perform services for the employer where the object thereof is to force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class, rather than to employees in another labor organization or in another trade, craft or class. In other words, suppose there were longshoremen down there in the employment of the Company on April 9, we will say, and these longshoremen were performing all of the work of loading lumber on barges. Unless those longshoremen have a contract with the employer whereby they can force the employer to continue hiring them, which is then specified in the contract, the employer is free to discharge those employees and assign the work to someone else, and any time a labor organization throws up a picket [603] line to force the employer to assign work to them, instead of those to whom the employer assigned it, then the act is violated.

The Court: The purpose, as I see it, of counsel's offering the testimony—it is for the purpose of rebuting or qualifying what has already been introduced as part of your case in chief. I think that is plain from what he said a moment ago, and for that I think it is admissible.

Mr. Banfield: If the Court please, the statement of Mr. Flint was they claimed they had a contract that was binding on the Juneau Spruce Corporation. Now, counsel has offered to show there is

such a contract with the Juneau Lumber Mill, and that the practice carried over, but he has not offered to show that the contract was binding upon the Juneau Spruce Corporation for any period of time whatsoever. Mr. Flint's testimony can only be rebutted by showing it is binding on the Juneau Spruce Corporation. Mr. Flint doesn't deny they had a contract with the Juneau Lumber Mill, but what he found as the result of his investigation was that it was not binding on the Juneau Spruce Corporation.

The Court: But that isn't all the testimony, as I recall it, when you consider it is not merely the testimony of Mr. Flint but all your testimony on that point. It would certainly tend to show that there was no work of this kind done by the longshoremen before that time. [604]

Mr. Banfield: No, that isn't true, your Honor. Before what time?

The Court: Before the change of ownership.

Mr. Banfield: I think there has been—I think just a lack of testimony that the longshoremen had been employed under the Juneau Lumber Mill. That has not been offered, and counsel would have a perfect right to offer it if he could show that there was an agreement on the part of the Juneau Spruce Corporation to——

The Court: I don't see how his offer or his statement could be construed as implying that he wants to put it in for that purpose. Now, I don't pretend to recall all the testimony that has gone in as to

who did this work before the change of ownership or to what extent, but the impression I have from the evidence submitted on behalf of the plaintiff is that there is testimony to the effect that work of this kind had not been done by the longshoremen before. Now, if I am in error on that, why of course there would be no ground upon which this particular testimony could be received.

Mr. Strayer: I think your Honor is in error in that regard. As I recall the testimony, there were two things; first of all, in the way of representations made by the longshoremen to the I.W.A.—two representations, one was that the longshoremen had a contract with the Juneau Spruce Corporation, which, it was testified, they found was false, [605] and Mr. Banfield has pointed out that no evidence is admissible to rebut that unless, in fact, they showed that there was a contract with the Juneau Spruce. The second thing, this particular work of loading barges, was longshoremen's work done by the longshoremen everywhere up and down the Pacific Coast, which Mr. Flint discovered since was false. I think the latter point is what your Honor is thinking about, the precise thing for counsel to rebut. If he could show that all longshore work up and down the Pacific was done by longshoremen; that is, all barge loading was done by longshoremen, but to show that the Juneau Lumber Mill had employed longshoremen for loading barges wouldn't show the general practice as represented by the longshoremen. This same problem

was before the National Labor Relations Board in proceedings before that Board. I assume the evidence they intend to offer here was that offered before the Board, and found by the Board not to be a contract with the Juneau Spruce Corporation. They didn't have the question of rebutting testimony, but I submit there is no testimony which could be rebutted in work done for the Juneau Lumber Mill.

Mr. Banfield: I have to disagree with my co-counsel. Mr. Flint did testify, as I remember, in addition to the charge that the contract carried over, he said they also represented to him they had the same practice up and down the Coast. Then he said also that the longshoremen told them there [606] was a past practice of the longshoremen loading barges, and that he investigated that and found that to be untrue. Now, it is true that there was a past practice even with the Juneau Spruce Corporation of loading a certain type of barge with certain type of products. Now, for the purpose of showing that that was false as the past practice, I want to go back to the past practice of the Juneau Lumber Mills. The testimony which they are now offering would rebut to some extent, in fact would rebut the testimony of Mr. Flint, because the Juneau Lumber Mills did use longshoremen for many purposes at the plant. The most force of the testimony was that there was no past practice of loading Company-owned barges with lumber, as they were carrying it on in October of

1947 or in April of 1948, and I think Mr. Flint is entirely correct in that, so that we want to point out to the Court that Mr. Flint did testify to that extent, and this might be used if they could show means of past practice, or what he meant. He meant, I think, by the testimony, that the Juneau Spruce Corporation had not employed longshoremen to load its own lumber on its own barges for shipment to its own customers. They are now attempting to show that Mr. Rutherford did it. What Mr. Rutherford did would in no way be material to this cause. Now, it is only material to show Mr. Flint was not entirely accurate, unless it is specified that there was past practice with all persons of that plant, that had ever owned it. That is [607] the distinction. If it is offered for that purpose, past practice, I think would be admissible on the theory that Mr. Flint testified on all past practice, and that would be material. I don't think the past practices of the Juneau Lumber Mill are material as to whether or not the plaintiff has a cause of action in this case. It doesn't follow that practice under the Juneau Lumber Mills is in any way binding on or requiring the Juneau Spruce Corporation to continue these men in employment. We would be willing to stipulate in the regard that regardless of what Mr. Rutherford did, that he was only testifying to the past practice of the Juneau Spruce Corporation.

The Court: Who?

Mr. Banfield: Mr. Flint was testifying as to

what the past practices were at the Juneau Spruce Corporation. That is the only past practice relevant in this case.

Mr. Andersen: Does your Honor want to hear anything further?

The Court: On the admissibility of this, if you have anything further to say than you have already said——

Mr. Andersen: It seems to me so crystal clear—we are asserting the contract here between the Juneau Spruce and Local 16—we are asserting the contract.

The Court: By the Juneau Spruce?

Mr. Andersen: Yes, and this is going to prove it. [608]

The Court: Then it is not merely a case of qualifying somebody else's testimony, but you claim it is admissible as part of your defense.

Mr. Andersen: Yes, your Honor, and also that it will impeach Mr. Flint because Mr. Flint said, if I can try to paraphrase his evidence, he said "They came and told us that they had had a contract"; that is, Local 16. Remember Mr. Flint talked about a Coast-wise contract signed on behalf of all by the International? He testified something like that so then he said "They came to us and told us they"—meaning Local 16—"had a contract with the Juneau Lumber which in their opinion carried on over when the Juneau Spruce took over." That is practically his verbatim testimony. On direct examination he further testified "We in-

vestigated that and found out that statement was false, that Local 16 never had a contract with Juneau Lumber." That is verbatim testimony, your Honor. It goes in for two purposes: to impeach Mr. Flint and to show a contract between Juneau Spruce and Local 16. That is what we will offer the evidence for.

The Court: You mean this contract to which you refer between the Local and the Juneau Lumber Mill, you contend is binding on the Juneau Spruce Corporation?

Mr. Andersen: Yes, I will.

The Court: By its terms or otherwise?

Mr. Andersen: By adoption, your Honor. [609]

The Court: Wouldn't you have to show first——

Mr. Andersen: At this point I might respectfully state, your Honor, this is an unusual procedure. Usually it is customary for counsel to ask witnesses questions and then have appropriate objections made at the time. This is consuming unnecessary time of the Court.

The Court: It is not an ordinary incident. Here the attempt is made to put testimony in out of order and further, from what you say, that this testimony would be without foundation in this respect, that there would be no foundation that the contract carried over except presumably that which would come from some other witness, but the witness' testimony goes in out of order and it would be improper to receive it. If it is shown by some other person that the contract carried over——

Mr. Andersen: That is our position. Calling out of order testimony taken on nunc pro tunc basis, Mr. Schmidt leaving town, and it is a courtesy to the witness. It only goes into the record when we put in our case in chief.

The Court: It would appear from what has been said here that the contract or evidence of it would be admissible to contradict Mr. Flint. Now then, so far as its admissiblity for any other purpose, such as to show that it was binding upon the Juneau Spruce Corporation, that would depend on the other proof. Subject to that condition it may [610] be received. Call the jury.

Mr. Strayer: May the record show that the evidence is coming in subject to our objection, unless it is so connected up except for the limited purpose of impeachment?

The Court: I think the record shows that.

Mr. Banfield: That is our position.

(Whereupon all twelve jurors took their places in the jury box.

Mr. Andersen: Shall we proceed, your Honor?

The Court: Yes. I think it should be stated to the jury what the purpose of the testimony is otherwise they might——

Mr. Andersen: Testimony, once it goes in, is for all purposes.

The Court: If you don't insist on it——

Mr. Andersen: No.

The Court: Very well.

GEORGE B. SCHMIDT

called as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. Mr. Schmidt, you have testified heretofore in this case and have been sworn and testified that you were an official of the Juneau Lumber Company and that you were also an official of the Juneau Spruce Company, up until, I [611] think, January of 1948; is that correct? A. Yes, sir.

Q. Now, while you were with the Juneau Lumber Company, I think you said you were Manager?

A. Vice President and Assistant Manager.

Q. And from 1941 did you have a contract——

Mr. Andersen: Will you mark this for identification please?

The Court: You intend to introduce it with this witness?

Mr. Andersen: Yes, sir.

The Court: I don't think it is necessary to mark it for identification then. Just fix the time.

Mr. Andersen: Very well.

Q. I show you a contract bearing the date June 4, 1941. Have you seen that before, sir?

A. Yes, I have.

Q. Is that a contract between Local 16 here in Juneau and the Juneau Lumber Mills?

A. This one doesn't have the Juneau Lumber Mill name on it, but we had a contract signed for us by the Northland Transportation Company.

(Testimony of George B. Schmidt.)

Q. The same contract?

A. Yes, and they were our agents.

Q. And this contract, dated June 4, 1941, was in effect on [612] April 30 of 1947, is that correct?

A. There was an amendment sometime in 1946, I believe, and the Northland Transportation Company also represented us on that.

Q. So far as still being a contract with Local 16, the same contract still continued in effect; is that true? A. That is right.

Q. So up until April 30, 1947, the contract between the longshoremen and the Juneau Lumber Mills—the longshoremen working here were governed by this contract; is that correct?

A. That is correct.

Mr. Andersen: We offer it in evidence.

Mr. Strayer: May we have a look at the whole thing?

Q. Juneau Lumber sold out to Juneau Spruce on April 30 or May 1 and after that date did you represent Juneau Spruce at that time, I believe, as Assistant Manager? A. That is right.

Q. And you carried on the hiring of the longshoremen in the same way you carried it on under Juneau Lumber? A. Yes, I did.

Q. Now, with respect to the I.W.A. contract, that is, the contract with the Wookworkers there, you of course had a contract with the I.W.A.; that is, Juneau Lumber had a contract with I.W.A.—

(Testimony of George B. Schmidt.)

the same general type of collective [613] bargaining agreement? A. Yes.

Q. Again, Juneau Lumber sold out to Juneau Spruce on or about April 30, 1947? A. Yes.

Q. During the interim between May 1, 1947, and November 3, 1947, the date that another contract was entered into between Juneau Spruce and the I.W.A., did Juneau Spruce carry on under that same contract also?

Mr. Strayer: I object to that as calling for his conclusion.

The Court: Objection overruled.

A. They called in the officers of the Union, the mill called them in on the day the Juneau Spruce took over, and told them they were going to operate along the same basis as they had with the Juneau Lumber Mills, but at any time that the Local, the sawmill workers' Local, wanted to get a contract, to just come up and they would negotiate one.

Q. So in that period grievances were settled under the old contract, and wages were paid under the old contract? A. That is right.

Q. Now, I believe that is——

Clerk of Court: Defendant's Exhibit——

Mr. Andersen: I think it is "C." Leave it blank until I check. I would like to read a portion of the record. [614]

Mr. Strayer: Is that the contract? Has that been admitted?

The Court: As I understood it, after it had a

(Testimony of George B. Schmidt.)

number or letter on it, you were going to show it to counsel?

Mr. Andersen: That is right.

(The document was passed to counsel for plaintiff.)

Mr. Strayer: This appeared to have been terminated September 31.

Mr. Andersen: It has an annual renewal clause.

Mr. Strayer: That is what I am trying to find.

Mr. Andersen: It is in there someplace. Counsel informs me that—Mr. Paul—this is the contract they operated on all during the period. I will offer it in evidence as Defendant's Exhibit C, your Honor.

Mr. Strayer: May the record show an objection, a general objection to this material. I understand it is being admitted subject to being connected up?

The Court: It will be admitted subject to being connected up in the manner indicated some minutes ago.

(Whereupon the document was marked Defendant's Exhibit C.)

Q. There are three signatures on Exhibit C in the righthand corner. Do you recognize the signatures?

A. I don't recognize the signatures. I know the men.

Q. Who were those three men? [615]

A. Sam Elstead is a longshoreman, and Mr. Ernest Buck, and so is Davis.

(Testimony of George B. Schmidt.)

Q. They were, to your knowledge, members of Local 16? A. That is right.

Mr. Andersen: I would like to read a portion of this, may it please the Court.

The Court: You may do so.

Mr. Andersen: "Section 1, that part reading 'transfer from vessel to first place of rest,' be amended to read 'transfer from and including vessel's sling to first place of rest.' It is recognized by I.L.W.U. No. 16, and agreed, that the three steamship companies, namely Alaska Steamship Company, Northland Transportation Company and Alaska Transportation Company, have an agreement with the Sailors' Union of the Pacific which gives members of that organization preference in the loading and discharging of cargo." That is the only portion I wish to read.

Q. Now, as an official of the Juneau Spruce Corporation, you were the auditor also, were you not?

A. I acted in that capacity to start with. Toward the end my duties were others, so——

Q. Were you familiar with the financial assets of the corporation? A. Yes.

Q. And you were familiar with the financial assets of the [616] corporation from May 1, 1947, to and including what day?

A. About January 19, 1948.

Q. And that is a period of eight months and a half? A. Yes.

(Testimony of George B. Schmidt.)

Q. During that period of time, Mr. Schmidt, and at the Juneau mill here in Juneau, what if anything were the net profits of the Company?

A. The profits of the entire organization up to the balance sheet, as I recall it, and my figures might be a little bit hazy, about $130,000.

Q. What were the profits of the corporation at the Juneau mill in Juneau, Alaska?

A. Somewhere around $60,000.

Q. During that eight month and a half period?

A. Yes.

Mr. Andersen: That is all. You may examine the witness.

Cross-Examination

By Mr. Banfield:

Q. Now, Mr. Schmidt, testifying as to the practice of the Juneau Spruce Corporation in hiring longshoremen, you testified you hired them in the same way as for the Juneau Lumber Mill, Inc.?

A. That is right. [617]

Q. What did you mean by that?

A. The work that we had for them to do at that time was work loading these boats that came in; you know, fishing boats or scows that came in. For someone else's scows we hired longshoremen for the benefit of the purchaser of the lumber.

Q. You said in the same way?

A. I called them up and had them come down.

Q. Was there ever any discussion as to how

(Testimony of George B. Schmidt.)

much they would be paid, what hours worked, conditions of employment?

A. We paid the going wage, which was in effect at the time. The fact of the matter is, we were presented with a bill by the longshoremen's boss and we accepted that.

Q. You hired them from time to time under the current conditions that they worked in Juneau?

A. That is right.

Q. Was the Juneau Spruce Corporation in any way obligated to hire them?

Mr. Andersen: I will object.

Mr. Banfield: May it please the Court, this is cross-examination. This is a defense witness put on as his own witness. I have a right to cross-examine to show exactly how they were hired, whether there is any better evidence of hiring, any contract, any obligation to hire, or if they were hired from time to time and let go, or whether they were steady [618] employees. I have a right to show all the conditions of this employment, after he brought out that it was the same way.

Mr. Andersen: I will waive.

A. The question again, please?

Q. Was the Juneau Spruce Corporation obligated to hire these people for this particular work? Did they have to hire them?

A. We were requested in most cases to get longshoremen by the people whom we hired longshoremen for.

Mr. Andersen: I ask that be stricken as not

(Testimony of George B. Schmidt.)

responsive to the question, may it please the Court.

Mr. Banfield: I will follow that up, your Honor.

Q. In other words, you mean you were obligated in so far as other people, customers, requested you to hire them for their account?

A. Yes, because they were paying for it.

Q. Did Juneau Spruce Corporation have any contract with these longshoremen? A. No.

Mr. Andersen: I am going to ask that that last answer be stricken as calling for a conclusion and opinion of the witness, may it please the Court. I think we have already established through this witness that the same kind of practice continued under the Juneau Spruce that obtained [619] under the Juneau Lumber. Now, I move the answer be stricken on that basis.

Mr. Banfield: If the Court please, I wrote down his specific answer. His answer was "Yes, I did." He was asked if he hired longshoremen in the same way, which is leading. I took no objection. I wanted to make sure it stood that way; what it means. The same way means same manner.

Mr. Andersen: I will waive the objection. Go right ahead, counsel.

The Court: Proceed.

Q. Was this intermittent or steady work?

A. Intermittent.

Q. How often did they work?

A. I couldn't answer that exactly, except whenever boats come in for lumber of that kind then we hired some longshoremen. Probably ten or twelve

(Testimony of George B. Schmidt.)

cases, something of that sort, during the period that I was there.

Q. How many hours would they work each time?

A. That depends entirely on the volume of work to do.

Q. What would be the minimum?

A. About two hours, I guess, something like that.

Q. What would be the maximum?

A. It might be a day; it might be two days.

Q. Would it ever be a week?

A. Rarely. I don't recall any time it was a week. [620]

Q. Do you recall any time that longshoremen worked more than two days at a time?

A. Not off hand. That could be, but I don't recall it.

Q. Now, when the Juneau Spruce Corporation took over, Mr. Schmidt, you say it called in the members of the I.W.A. Local, or its officials, and told them that you would operate in the same way that the operation had been conducted in the past. Was there any agreement as to how long this would continue?

A. Just to the time they wanted to negotiate a contract, and when they got ready to negotiate a contract they would let us know and we would negotiate one with them.

Q. Was there any obligation on the part of the Company to continue past practice indefinitely?

A. I would say to the extent that we agreed to do it verbally.

(Testimony of George B. Schmidt.)

Q. For how long did you agree to do it?

A. Until the boys wanted to negotiate a contract.

Q. Until the I.W.A. wanted to negotiate a contract? A. That is right.

Q. What kind of work did these longshoremen do when they were hired during this period?

A. They loaded scows or boats.

Q. That is during the period you were employed there? A. That is right.

Q. Whose boats or scows were they? [621]

A. Sometimes some of the scows were Sommers Construction Company's, and fish companies, Astoria and Puget Sound, and Booth Fisheries to Pelican.

Q. Did the vessels the longshoremen loaded ever belong to Juneau Spruce Corporation?

A. No.

Q. Did Mr. Rutherford or the Juneau Lumber Mill, Inc., ever employ longshoremen to load barge loads of lumber for shipment to points in British Columbia or points in the United States?

A. No.

Mr. Andersen: To which I will object as improper cross-examination, may it please the Court.

The Court: Objection overruled.

Q. Were such shipments made to Canada and the United States?

A. Not by barge. It only went by the standard steamships.

Mr. Banfield: I think that is all.

(Testimony of George B. Schmidt.)

The Court: Well, the previous answer assumed that barges of lumber were sent out, and the next answer was to the effect that none was used. It seems to require clarifying, doesn't it?

Mr. Banfield: I think we have to keep in mind—I am not talking about—I asked if the Juneau Lumber Mill ever shipped any lumber by barge to British Columbia or——

The Court: That was the last question, but I thought [622] he said in the previous answer——

Mr. Andersen: He said it was all shipped on regular boats.

Mr. Strayer: He testified that longshoremen were not used to load barges for the Juneau Spruce and that the Juneau Lumber Mill never shipped by barge to the United States or Canada.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you, sir.

(Witness excused.)

FREEMAN SCHULTZ

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Freeman Schultz.

Q. Where do you reside, Mr. Schultz?

(Testimony of Freeman Schultz.)

A. Juneau.

Q. Mr. Schultz, when did you first come to Juneau? A. Late in January of 1947.

Q. And for whom were you employed at that time? A. Coos Bay Lumber Company.

Q. And what was the purpose of your visit to Juneau in January, 1947? [623]

A. To inspect the mill of the Juneau Lumber Mill.

Q. Did you inspect it? A. I did.

Q. Tell me the condition that you found at that time of the, say the buildings first. What was the condition of the buildings of the Juneau Lumber Mill, Inc.?

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial, may it please the Court.

The Court: Objection overruled.

A. This was a very cold period in the winter and it didn't give me a good opportunity to inspect the plant thoroughly, but it was quite obvious that there had been a fire, and the buildings showed signs of fire. The sawmill and remanufacturing building showed indications of fire all over it. Where I could see through the dock it showed the dock was in poor state of repair. The burner, as I remember it, had some holes. One or two smokestacks were down in the boiler room, they had fallen over.

Q. Mr. Schultz, let me stop you there. You say

(Testimony of Freeman Schultz.)

the dock was in poor repair? Were the buildings built on the dock itself? A. Yes.

Q. In other words, supported by piling?

A. It is all on piling. There is rock under part of it, but it is still on piling. [624]

Q. You stated that it was in bad repair. How bad repair?

A. I couldn't tell too closely because of the snow and ice on there, but it indicated signs of decay and it hadn't been more than for a period, I would say, of three or four years. It was obviously run down.

Q. This fire you said there was evidence of everywhere, was there a substantial loss by fire?

A. That I don't know. I could see the joists and beams in the ceiling and all that had been charred by fire. It was holding up the load and would be adequate.

Q. The fire damage had been repaired?

A. Yes.

Q. Completely repaired? A. No.

Q. This burner—what kind are you talking about? A. Refuse; incinerator.

Q. The thing that burns up waste slabs?

A. Waste slabs, and throws the sawdust all over town.

Q. This boiler room; what is that?

A. Where the steam is generated for the steam engines in the sawmill and for the electric turbine.

Q. What was the condition of any other structure; did you notice?

(Testimony of Freeman Schultz.)

A. They had a remanufacturing plant that was in the middle of the dock and looked like the Toonerville Trolley, things [625] leaning this way toward Jones'. It was very dilapidated.

Q. How was the log pond?

A. There was none. There was a steeve boom, or floating boom, along the edge of the dock and then there was a float that had a polesaw or drag-saw on it that they could cut the end of the logs off, but they had to stick the logs underneath the mill. It was a very poor location.

Q. How long is this dock?

A. The sawmill sets in the middle of it. From the extreme south end to the extreme north end—it isn't true north and south—I would say it is about eleven hundred feet, as I remember it.

Q. Is it all supported on piling?

A. Yes, at least along the front.

Q. The commercial sort or native piling?

A. Native; some spruce, some hemlock.

Q. How about the outbuildings, sheds and things like that?

A. The building that Mr. Rutherford called the retail shed was in a fairly good state of repair. He had another building on the face of the dock that contained the machinery of an ordinary repair shop; that is, lathes and blacksmith's forge and welding outfit and stuff like that. That was quite,

(Testimony of Freeman Schultz.)

oh, dirty, and looked to me more as a firetrap. [626]

Q. What was the condition of the machinery in this plant? Take the power house, for instance.

A. Well, in the power house it was quite evident that there was need of considerable break work. The boiler fittings, they were down in places and bulged out in other places, and then the roof had quite a sag in it and, as I said before, one or two stacks was clear down, and the trestlework over the top of the boilers had quite a sag in it; just in need of repair.

Q. How about the burner?

A. Well, they had a single screen in it rather than a normal double screen. It was a fire trap rather than being an efficient burner. It had a conveyer leading to it. At one time it had a place in it that you could cut wood out of the burner, out of the conveyer going to the burner, and that had ups and downs on it. It wasn't on a true course, and the burner itself had holes where the sheetmetal had rusted through.

Q. How was the condition of the machinery in what you call the band room where primary or first cuttings are made?

A. The band mill—the wheel had been greased to protect it from rust. It looked to me like a good standard make of band mill, and appeared taken care of, a very good unit.

Q. And the carriage?

A. The carriage showed lack of care. In some

(Testimony of Freeman Schultz.)

places it had [627] been patched, in some places with wood and some places with metal. It was an old-fashioned carriage, obviously not worth much value.

Q. How about the various pieces of machinery in the mill, such as planers and resaws, and various type motors and things; what was the general condition of them?

A. I would say they looked like they had been kept in a fair state of repair.

Q. Were they fairly well adapted to modern use, or had they had necessary improvements on them?

A. I objected to the size of the edger. It would be too small for the type of business I thought we would go after. The trimsaw looked to me to be adequate. The main resaw was, if the head were renewed, a very modern unit, but the placing of the machinery—to get to the resaw and away from it—appeared very inadequate. Of course I didn't see the green chain in operation. None of this mill was in operation. It was a case of observation. It happened to be a little bit unique. I had never seen one quite that way.

The Court: Wouldn't it save time to have the witness state the condition he found the mill in instead of having his attention called to each phase of it?

Mr. Banfield: If the Court please, I have finished that phase of it. [628]

(Testimony of Freeman Schultz.)

Q. Mr. Schultz, when next did you come to Juneau?

A. The fourth day of June, 1948.

Q. In the meantime, had the Juneau Spruce Corporation purchased all these assets?

A. Yes.

Q. When this purchase was made was Juneau Spruce Corporation a new company or had it been in existence before? A. No, that was new.

Q. A new corporation?

A. A new corporation.

Q. Were you an official of the corporation at the time it was formed and afterwards?

A. I helped form it. I was in on the details of the formation of the corporation, and I bought stock and I was elected a Director at the first meeting.

Q. Have you participated in the affairs of the Company ever since?

A. As a Director, or one that would know general policy or detail in the formation of the Company.

Q. Were you acquainted with the plans of the corporation at this time?

A. I helped make them.

Q. What was your plan with regard to any changes in the physical properties themselves and the ultimate use to which they were going to be placed after the plan was [629] executed, and how long it would take? Tell your plans generally.

(Testimony of Freeman Schultz.)

Mr. Andersen: I object to that as hearsay.

The Court: It is what they did. They might not have carried out the plans.

Q. Tell us what you did in changing things and in changing the production and plant itself?

A. What I did?

Q. What the Directors did?

A. Well, the first thing we wanted more production through the mill.

Mr. Andersen: I move that be stricken, may it please the Court, as not responsive to the question, what was done?

A. We asked that a second shift be put on the mill to get production.

Q. Was that done? State if a second shift was put on and when, etc.

A. I can't tell you when, but as soon as Mr. Hawkins could get the second shift going we asked that it be done.

Q. What else was done with regard to the plant itself? A. That preparation be made——

Q. Don't tell what the Directors asked Mr. Hawkins to do; tell what was done by Mr. Hawkins or anybody else as the result of the Directors' instruction. If they sold [630] equipment or disposed of the plant or what did they do?

A. We bought more equipment.

Q. Tell us what you did.

A. We asked that Edna Bay——

Mr. Andersen: I move that be stricken as not responsive.

(Testimony of Freeman Schultz.)

The Court: Yes.

Q. I don't want you to state what you asked somebody to do, but what Juneau Spruce did.

A. They spent a half million dollars worth of equipment for the logging camp at Edna Bay. We purchased another tugboat.

Q. Did they do anything with respect to the dock property? A. Yes.

Q. What did they do?

A. A lot of these docks were taken out and replaced with rock. The remanufacturing shed was torn down. The machine shop was removed from the dock face and then put in a better location for plant operation and fire protection.

Q. Was there any particular change in the mill itself during the operating season of 1947?

A. No; you couldn't repair and operate the mill at the same time. It had to go along as best it could.

Q. Were there outside repairs done, outside work? [631]

A. These buildings were taken down.

Q. Was any additional land purchased?

A. Yes, on the north end of the property, between there and the City Dock property and the City Cafe.

Q. During the winter shutdown of 1947-1948, what was done at the plant?

A. As I remember, there was about $60,000 in repairs in the boiler room itself.

Q. You mean just in the power house?

(Testimony of Freeman Schultz.)

A. Just in the steam boilers, and it was about—it seems foolish—eight or ten thousand dollars' worth of parts for the electrical turbine, ordered and installed.

Q. Were these expenditures necessary?

A. Well, they were advisable. The Allis-Chalmers representative that was supposed to be an expert on turbines recommended that, and you could almost carry them in your arms, but they cost a lot of money.

Q. Tell us what else was done.

A. The edger was removed from the sawmill and there was a new—well, larger—one, and a larger motor, which meant they had to go back with a power line to the power house. There was new transformers on account of the increased use of electricity installed. There was a small replacing of the machinery in the planing mill to get a better flow of lumber. There was a transfer chain installed in [632] the mill itself, so that the lumber would flow through the mill with the least interruption and the green chain itself was changed. The machinery from the remanufacturing plant was located underneath the mill to better advantage than it had been.

Q. From an operating standpoint, what was the condition of the mill when you arrived on June 4, 1948?

A. Well, it was improved over what it was when I saw it in 1947.

(Testimony of Freeman Schultz.)

Q. Had the money, in your opinion, been prudently expended there?

A. Say that again?

Q. Had the money that was expended on these changes been prudent and wise?

A. Largely. It would be a question of opinion or judgment of different individuals.

Q. In other words, what you mean to imply by that——

Mr. Andersen: I object to that. The question has been asked and answered and it is calling for the witness' conclusion.

The Court: Yes, unless there is something in the question which doesn't call for what appears to be merely speculative matter. That would end it.

Q. Mr. Schultz, when you arrived in June, 1948, what quantity of lumber was this mill capable of producing? [633]

Mr. Andersen: I am going to object to this as cumulative, may it please the Court. They have already had a couple of witnesses testify to this general point.

Mr. Banfield: If the Court please, we have had Mr. Schmidt testify that when he left in December, 1947, the mill was in condition in his opinion to produce a certain amount of lumber. That is the only testimony we have had on that point of which I have any recollection.

The Court: Objection overruled.

A. The mill was down and we would have to go

(Testimony of Freeman Schultz.)

back to your records of March and April, when the mill started up. As I recall those, they indicate apparently 100,000 feet in eight hours.

Q. Were those records of the first days of production and the short period they worked in the spring of 1948, be indicative of what the mill could produce on an average for 1948?

Mr. Andersen: I object to that as calling for the opinion of the witness.

The Court: Objection overruled.

A. They should increase over a period of years. I have always found that mill efficiency increases as time went on and the men got more accustomed to their jobs and at this time there was a big snow, at the time they were starting the mill, and they had quite a bit of difficulty around [634] the mill, getting lumber to and from the mill.

Q. Did you take over as Manager of the Juneau Spruce Corporation? A. Yes.

Q. On what date?

A. I arrived here the fourth of June; actually I was the Manager before that.

Q. For how long?

A. Oh, the first of June.

Q. Mr. Schmidt, when you took over——

Mr. Andersen: Mr. Schultz.

Q. Mr. Schultz, I am sorry—when you took over on June 4 how many men were employed there?

A. Eight, eight or ten.

Q. Are you speaking of mill hands or overall?

(Testimony of Freeman Schultz.)

A. That is all the men I found at the plant.

Q. Will you tell us what activities were engaged in by the Juneau Spruce Corporation after that date? What did the Company do? Did it continue, close the mill or operate, or how many men were employed, or what?

A. Immediately after that date there was nothing done. We continued on with these eight to ten men on a repair basis. There was a job of patching things up that needed to be fixed quite obviously, until—I am not quite sure of the date, but I remember it was a Saturday afternoon [635] that a bunch of them came and wanted to know——

Mr. Andersen: I will move—I will object to this as incompetent, irrelevant and immaterial.

Q. Just tell what happened.

A. A group of men appeared.

Q. What did they do after they came?

A. They came in the office.

Mr. Andersen: I ask that a foundation be laid, may it please the Court.

Mr. Banfield: We don't know what men they are yet.

Mr. Andersen: I don't care if you know. I am entitled to a foundation.

The Court: The time and the place.

Mr. Andersen: And persons present.

A. The men came into the office and said they were former employees——

(Testimony of Freeman Schultz.)

Mr. Andersen: I move that be stricken unless a proper foundation is laid.

The Court: I think it is preliminary. Objection overruled.

Q. About what time of year was this Saturday afternoon?

A. Right around the Fourth of July.

Q. 1948? A. 1948.

Q. And exactly where were you at this time? [636] A. In the office.

Q. And who came?

A. The I.W.A. President, and I would say about four or five men.

Q. Whom did they represent themselves to be?

A. The I.W.A.

Q. Now, Mr. Schmidt—Mr. Schultz, I mean—what did you do with these men?

A. Talked to them.

Q. Were they employed by the Company?

A. Not that day.

Q. When? If they were employed, when?

A. After the sixth, I think it is the sixth, a period of two or three days in there, as I remember it. The Saturday was the third, I think, of July, putting the fourth on Sunday—Monday, Tuesday—probably Tuesday, the sixth of July, the men came through and we began hiring a crew.

Q. Now, tell us what that crew did until the mill opened.

A. They started repairing machinery and ad-

(Testimony of Freeman Schultz.)

justing machinery around the mill in preparation for the opening.

Q. How many men were employed at the time of the opening?

A. About fifty-seven, as I remember it.

Q. And did that number increase as the mill continued to operate? A. A little bit. [637]

Q. Was that enough to operate the plant?

A. It was enough to operate, but not to full efficiency.

Q. To what exent was the plant operated; that is, from a production standpoint?

A. All the machinery was operated, but we will say about three-fourths of the efficiency, the reason being that we had certain key men, but other key men we would not have. We had to upgrade or take common labor on jobs a little beyond their ability. As a result the efficiency was down.

Q. Why was it you were not able to get all the labor you wanted?

A. There was a picket line outside there.

Mr. Andersen: I move that be stricken as calling for a conclusion and opinion of the witness.

Q. In what way——

A. A good many men will not go through a picket line, and we were not sure how long we could operate with the picket line—or when the picket line would be removed. We did not care to go ahead and hire a man under those circumstances.

Q. In other words, you didn't want to build up a full force? A. That is right.

(Testimony of Freeman Schultz.)

Q. How long did this condition continue, of just partial operation? [638]

A. Until there was no room on the dock, until about the eleventh of October, 1948.

Q. Why was it you did not want to operate at full production from July 6 to October 11?

A. We didn't want to accumulate a number we couldn't ship. It will deteriorate.

Q. Were you shipping any lumber during this period? A. A couple barge loads.

Q. And when did you ship those barge loads?

A. One late in August, and the other late in September.

Q. Where did the barge shipped in August go to?

A. The tugboat "Santrina" had orders to take it to Prince Rupert.

Q. And was it unloaded at Prince Rupert?

A. No.

Q. Then where did it go to?

A. To Tacoma.

Q. Was it unloaded in Tacoma? A. Yes.

Q. This second barge load—where did you send that? A. To Tacoma.

Q. Direct? A. Direct.

Q. Was it unloaded there? A. No. [639]

Q. How long did it stay in Tacoma?

A. What?

Q. How long did it remain in Tacoma unloaded?

A. Until April 18, this year, 1949.

(Testimony of Freeman Schultz.)

Q. Is it now unloaded? A. Oh, yes.

Q. Now, did you try to ship any lumber by any other methods? A. Repeatedly.

Q. What methods did you try?

A. We tried to ship some by the regular commercial steamers.

Q. To where?

A. Just to put it on the steamer. We had a market for it in Seward. In Alaska we had a market, and we had a market in the States, and we had an export market.

Q. The market in Alaska—how large a market was that?

A. Through our two retail yards we normally expect to merchandise ten million feet annually.

Q. Don't you have three?

A. Yes. One here.

Q. How much can you sell through those three?

A. Approximately twelve million.

Q. Were you successful in getting your lumber delivered to your retail yards in Alaska?

A. The yard in Juneau is at the plant, so I am referring to the plants in Anchorage and Fairbanks. [640]

Q. As to those two, were you successful in getting it on a steamer?

A. Not on a steamer.

Q. Do you know why you couldn't get it on a steamer?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

(Testimony of Freeman Schultz.)

The Court: Objection overruled.

A. The steamship company advised us that——

Mr. Andersen: I move that be stricken as hearsay.

Q. Do you know why you could not get it on the steamer?

Mr. Andersen: Same objection.

The Court: Same ruling.

Q. Answer yes or no. A. Yes.

Q. What was the reason—you don't need to tell what somebody said.

A. The longshoremen would not load it.

Q. Were you able to deliver any lumber to these retail yards by any other methods?

A. We delivered some to the Fairbanks yard.

Q. By what means?

A. By barge from Juneau to Haines and truck from Haines to Fairbanks.

Q. Who loaded this barge in Juneau?

A. The Woodworkers. [641]

Q. That went to Haines. You mean the mill hands? A. Mill hands.

Q. Was it your own barge?

A. We actually loaded it on the stern of the tugboats. We could take a barge or boat. It is our own barge or our own boat.

Q. How did you get it to Fairbanks?

A. By truck.

Q. How much did it cost to deliver the lumber from Juneau to Fairbanks by that method?

(Testimony of Freeman Schultz.)

A. About $54.

Mr. Andersen: That is immaterial, your Honor.

The Court: It is immaterial unless it is compared with something else.

Mr. Banfield: I am laying a proper foundation for showing what our damages were and how it affected our operation.

The Court: I assume then you will follow it up?

Mr. Banfield: Surely.

The Court: You may proceed.

Q. How much did it cost to deliver the lumber from Juneau to Fairbanks by that method?

Mr. Andersen: I object to that. It is purely speculative.

The Court: Objection overruled. [642]

A. As I said, $54 a thousand green lumber, dry lumber, all lumber.

Q. $54 per thousand feet?

A. Thousand feet.

Q. Mr. Schmidt—Mr. Schultz—did you try shipping any of this lumber to Anchorage?

A. Are you referring to the lumber that went from Haines?

Q. Yes. A. Yes.

Q. How much did you ship that way?

A. None. I tried but I couldn't get a trucker that would haul.

Q. Did you try shipping any by steamer to the United States? A. Yes.

Q. And were you successful? A. No.

(Testimony of Freeman Schultz.)

Q. Do you know the reason why you were not successful? Do you know? Yes or no.

A. Yes, I know.

Q. What was the reason?

A. The longshoremen wouldn't load it.

Q. In the absence of steamship service, what other methods could there be to get it to the States?

A. Barge.

Q. Is that all? [643]

A. Our own equipment.

Q. Mr. Schultz, you said that the longshoremen were the cause of your being unable to load on commercial steamers. Is there any other way you can get it on steamers without the use of longshoremen?

A. Not that I know of.

Q. Will the steamship companies let you load it on the steamers and without the longshoremen?

A. I never asked them.

Q. Have you ever seen it done? A. No.

Q. In shipping to the States, to what ports could you ship lumber?

A. Puget Sound ports.

Q. Any place else?

A. British Columbia.

Q. And did you try shipping it through British Columbia? A. Yes.

Q. Where did you try to ship it?

A. Prince Rupert.

Q. Were you successful? A. No.

Q. What was the reason?

(Testimony of Freeman Schultz.)

A. The longshoremen would not unload it.

Mr. Andersen: I move that be stricken as a conclusion [644] and opinion of the witness, no foundation having been laid for that. It is all hearsay.

The Court: Objection overruled.

Q. Mr. Schmidt—Mr. Schultz, I am sorry—did you make any investigation or cause any to be made for you regarding the possibility of shipping through other ports in Briitsh Columbia?

A. No.

Q. Now, I am talking about at all times since you took over as Manager down there, you took over—at all times since you took over the Juneau Spruce Corporation's operations and management, did you attempt to ship to any other places on Puget Sound than Tacoma?

A. We investigated other places, but we didn't try to ship to other places.

Q. What areas did your investigation cover?

A. Port Townsend and Anacortes and Seattle.

Q. Just those three places?

A. And Tacoma.

Q. And Tacoma. And what was the result of that investigation? A. That——

Mr. Andersen: I am going to object to this as calling for a conclusion and opinion of the witness, may it please the Court.

The Court: If he knows he may answer. [645]

A. The ports of Tacoma and Seattle were found to be the only ones we would have with proper

(Testimony of Freeman Schultz.)

facilities down in Puget Sound for disposing of the products.

Q. And were they open to you—Seattle and Tacoma? A. No.

Q. Now, did you actually try shipping any to Seattle? A. Yes.

Q. Were you successful in getting it unloaded?

A. No.

Q. Do you know why?

Mr. Andersen: The same objection, your Honor.

The Court: Objection overruled.

Q. Do you know why? A. Yes.

Q. What was the reason?

A. The tugboat captain was told not to pull into the dock.

Mr. Andersen: I object to that as hearsay.

Q. What was the reason?

A. He was not allowed to dock.

Mr. Andersen: May it please the Court, I move the previous answer be stricken.

The Court: Yes, that part of the previous answer based on conversation will be stricken.

Mr. Banfield: Will the Reporter repeat the last question and the last answer? [646]

Court Reporter: Q. "What was the reason?" A. "He was not allowed to dock."

Q. Who did you have make this investigation for you? A. Mr. Harris.

Q. Who is Mr. Harris?

Mr. Andersen: May it please the Court, I move

(Testimony of Freeman Schultz.)

all this witness' testimony be stricken. It turns out that somebody else made the investigation for him. Obviously it is hearsay.

Mr. Banfield: We are entitled to show what agents of the Company——

The Court: This question is competent. The objection is overruled as to this question. We will see what develops.

Q. Who was Mr. Harris?

A. An employee of the State Steamship Company.

Q. Doing this on your behalf?

A. Yes, sir.

Q. At your instructions? A. Yes, sir.

Q. Did anyone else make any investigation for you? A. Mr. Rogers.

Q. Who is Mr. Rogers?

A. He is our Portland attorney.

Q. Was there anyone else engaged in this investigation?

A. I was down there mayself one trip. [647]

Q. And was the result of all these investigations the same? A. All the same.

Q. Did Mr. Winston Jones make an investigation? A. Yes.

Q. Who is Winston Jones?

A. He is the District Manager of the State Steamship Company in Seattle.

Q. Is he the same Winston Jones that formerly was with the Alaska Transportation Company?

A. That is right.

(Testimony of Freeman Schultz.)

Q. Did Mr. Jones and Mr. Harris make any investigation in Canada?

A. Mr. Harris did.

Q. When was that?

A. That was the time that the barges were first started down to Prince Rupert.

Q. What was the result of his investigation?

A. Those barges were unloaded.

Q. You say that this was at the time that what?

A. You asked me if anyone made investigations at other ports. Mr. Harris did, but the lumber was unloaded in that instance.

Q. Was any investigation made in Canada thereafter?

A. I have had communications with Mr. Youngs.

Q. What was the result of that investigation?

Mr. Andersen: I object to that as hearsay and calling for the conclusion and opinion of the witness.

The Court: If he knows he may answer.

A. We were advised the longshoremen would not unload the lumber.

Q. Did that investigation apply in one place or more than one place?

Mr. Andersen: Same objection, hearsay and calling for the conclusion and opinion of the witness.

The Court: If he knows he may answer.

A. Mr. Youngs; it was just Prince Rupert.

Q. Now, after the mill—or what happened on October the 11th? Answer that—1948?

(Testimony of Freeman Schultz.)

A. We closed the mill.

Q. Why did you close the mill?

A. There was no more room on the dock to store lumber.

Q. Did you have any other places to store it except on the dock? A. No.

Q. Would it be practical to store it anyplace else? A. No.

Q. Was that the sole reason for closing down?

A. Yes.

Q. What was the cause of there being so much lumber on the dock? [649]

A. Because we could not ship it.

Q. Now after October 11 what activities took place at the mill?

A. We had repaired the mill, improved the mill and plant properties as a whole.

Q. Just state the general nature of those improvements during this last winter.

A. We moved the retail shed to the property line to increase our storage area. We built a log pond; we build a bridge connecting the north and south yards; we constructed a fence around the property; we repaired the burner and we did considerable work inside the mill itself in the resaw room.

Q. What type of work is that?

A. We relocated some of the machinery and installed this method of getting the lumber out of the mill.

(Testimony of Freeman Schultz.)

Q. Was this relocation any change in the work done by Mr. Rutherford or the work done by Mr. Hawkins? Who had put it in there originally?

A. Yes, it changed both of them. We changed the location of the green chain that Mr. Hawkins had put around the mill. We ran it a different direction, and then we changed the flow and method of getting the lumber out of the mill itself.

Q. Who had originally determined the flow and method of [650] getting it out of the mill?

Mr. Andersen: I object to that as incompetent and irrelevant and immaterial.

The Court: Unless it is connected with production it is immaterial.

Mr. Banfield: Counsel for defendant has attacked the work done down at the mill by cross-examining other witnesses. He asked if everything Mr. Hawkins did had been torn out and done over again and all been charged as expenses against our damages. That is the purpose. If we have to call the witness back again, I will have to do it. I am trying to lay a foundation here for our expenses attributed to and as a result of this strike.

The Court: The expense of making these repairs? You don't attribute that?

Mr. Banfield: No.

Mr. Andersen: I am surprised at that. I still don't believe he has a right to impeach his own witness.

Mr. Banfield: I am impeaching my own witness?

(Testimony of Freeman Schultz.)

Mr. Andersen: All counsel is trying to do is impeach Mr. Flint, his own witness.

Mr. Banfield: Who?

Mr. Andersen: Mr. Flint, his own witness. That is correct.

The Court: A party has a right to contradict his [651] own witness, as distinguished from impeaching.

Mr. Banfield: As a matter of fact, he confirmed Mr. Flint.

The Court: Even though it is shown that two men disagreed as to some installation that isn't part of the case for either one of the parties, as I see it. Any evidence as to improvements made, unless connected with an increase in production or decrease in production would be immaterial.

Mr. Andersen: Also, I further object to it as speculative, may it please the court—entirely speculative.

The Court: You can hardly say whether or not improvements made at a certain time has any speculative element in it.

Mr. Andersen: Not as to improvements.

Mr. Banfield: There is another purpose, and that is this: counsel attacked the witness Flint and tried to imply he was employed there as an official of the Union and not doing anything and getting paid a big exorbitant wage and no need for it.

The Court: This, if it is sought to be elicited, that Flint was not engaged in unnecessary work, would be perfectly proper.

(Testimony of Freeman Schultz.)

Mr. Strayer: The importance of this testimony as I see it is that plaintiff must show, to prove damage, that before the strike and during the ensuing year they could have [652] manufactured and sold a certain amount of lumber. Mr. Andersen attacked it on the basis that it was poorly constructed by Mr. Hawkins and there were bottlenecks, and Mr. Schultz had to tear out all of it and put in new. To meet that kind of contention, we are entitled to have Mr. Schultz, the new Manager, tell what changes there were as the result of the improper construction methods of Mr. Hawkins. As the basis for his opinion of what the production would be from the shutdown to the present time, and for the further reason, he needs that as a basis for production after he made his extended investigation.

The Court: If it is connected with the production it is material, otherwise I can't see that it is.

Mr. Andersen: In the words of the poet, "Methinks these gentlemen protest too much." I was examining Mr. Flint, as your Honor will recall; Mr. Flint says the mill was full of bottlenecks and a lot of equipment Mr. Hawkins put in had to be taken out. I was examining him and that came out voluntarily, as far as I was concerned. The Court cut off that line of questioning as far as I was concerned, though I endeavored to pursue it. I think the Court's ruling was incorrect, maybe I am wrong—at least the Court ruled and I desisted

(Testimony of Freeman Schultz.)

too. I submit all this testimony is immaterial. The gentleman may testify what was done, but why should they try to rehabilitate Mr. Flint? They are trying to show he was a fine [653] boy, where, as a matter of fact, their own witness, subject to preliminary examination, said the mill was full of bottlenecks.

Mr. Banfield: He can't back that up in the record. This has gone a bit too far. I think the Court should caution counsel that it should not be permitted.

The Court: There is nothing that prevents a party from contradicting his own witness by another witness. All I am calling attention to is that whatever work was done down there, to be made competent as proof, would have to be connected up with production. The objection will be overruled, with the admonition to be brief about this and connect it up with production. We are not making very fast progress in this case.

Q. Now, Mr. Schultz, in making these changes you spoke of and relocating the green chain, what was your purpose in doing that?

A. To relieve that bottleneck. The lumber backed out—couldn't get out of the mill onto the green chain; bottlenecking. It was to relieve that.

Q. How did you rebuild the green chain?

A. We moved a section of it over and we installed a new section in there so we delivered lumber onto the green chain on the lower floor in four places rather than one.

(Testimony of Freeman Schultz.)

Q. Was that an improvement over what Mr. Hawkins had, or a [654] change from what Mr. Hawkins had done?

A. In my opinion, a distinct improvement.

Q. Was any part of this due to improper installation by Mr. Hawkins? A. No.

Mr. Andersen: I object to that as calling for an opinion of the witness.

The Court: Objection overruled.

A. This was entirely new from anything that Mr. Hawkins had.

Q. You heard the testimony of Mr. Flint?

A. Most of it.

Q. Is that the bottleneck to which he referred?

Mr. Andersen: I object. One witness cannot comment upon another.

The Court: Objection sustained.

Mr. Strayer: Are we precluded from showing that Mr. Flint testified that the bottleneck consisted of the backing up of the green chain?

Mr. Banfield: I asked if it was the same as Mr. Flint testified about.

The Court: The question—having already testified as to the chain—whether it is the same incident to which Mr. Flint testified is a matter for the jury.

Q. How many green chains do you have down there? A. One. [655]

Q. Now, Mr. Schultz, have the longshoremen ever contacted you or talked to you regarding a settlement of this dispute? A. Yes.

(Testimony of Freeman Schultz.)

Mr. Andersen: May I interrupt? Will you read the question, Miss Reporter?

Court Reporter: "Now, Mr. Schultz, have the longshoremen ever contacted you or talked to you regarding a settlement of this dispute?" A. "Yes."

Q. You may answer the question.

The Court: He has answered.

A. Yes.

Q. When was this?

A. I would say about the middle of October, 1948.

The Court: When you say "longshoremen" you should indicate whether it is the Local or the International.

Mr. Banfield: Yes.

Q. Who contacted you?

A. Mr. Vern Albright wrote me a letter requesting a conference.

Q. And did you have a conference?

A. Yes.

Q. Who was present at the conference?

A. Mr. Albright and Mr. Pearson, Mr. Flint and Mr. Francis, as I recall, and Mr. Banfield and myself. [656]

Q. And who did Mr. Albright represent himself to be?

Mr. Andersen: I object, the same objection as heretofore, so far as the International is concerned —hearsay, incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(Testimony of Freeman Schultz.)

A. Mr. Albright said that he was the International Representative, appearing on behalf of Mr. Bulcke, and Mr. Pearson was the President of the Local.

Q. Tell me, what did they say and who said it? Who did the talking?

A. Mr. Albright did practically all of it.

Q. That would be for the Local and the International? A. Well——

Q. You said Mr. Albright did practically all the talking? A. That is right.

Q. Who talked for the Company?

A. I did.

Q. What did Mr. Albright say?

A. The first thing he told me was that they had a picket line out there and were prepared to keep it there for twenty years if necessary, and he wanted to negotiate.

Q. What was the reply of the Company to that conversation?

A. It was his business how long he kept it there.

Q. Is that what you said?

A. That is right. [657]

Q. And he said he wanted to negotiate?

A. That is right.

Q. Is that what you said?

A. That is right.

Q. Did he state what he wanted to negotiate, or what terms of negotiation—tell us what he said.

A. He had a letter in his pocket that said Mr. Bulcke had a proposal that was made in Portland,

(Testimony of Freeman Schultz.)

and he had been down there and the letter instructed him to come and work out an agreement with us up here.

Q. And what was your reply to that?

A. That we were—we had instructions not to negotiate, but we were willing to go around those instructions from my superior, if it could result in an agreeable settlement.

Q. Did you—you said you told them, "We have instruction not to negotiate." Who did you mean by "we"? A. The Company.

Q. The Company had instructions?

A. The President of the Company had told me not to sign any contracts here, that they had to be signed in Portland.

Q. Was the Company willing to negotiate in Portland at that time? A. Yes.

Q. What was the purpose of this meeting in Juneau?

A. The purpose was to get some facts as to the situation up [658] here.

Q. Who wanted the facts?

A. Mr. Bulcke.

Q. Mr. Albright said what?

Mr. Andersen: I assume this is conversation with Mr. Albright, and my same objection goes to it, your Honor?

The Court: Yes.

Q. What did Mr. Albright say he was there to do?

A. To try to reach an agreement.

(Testimony of Freeman Schultz.)

Q. Now, what was the reply of the Company to his proposal to reach an agreement?

A. While we had a contract with the Woodworkers that we felt covered this work, that if there was a dipsute between the Woodworkers and the Longshoremen covering the same job, if the two of them could get together on some sort of basis we could operate and work on, I would be willing to recommend it to the Board or the President of the Company for adoption.

Q. What was done in pursuance to that exchange of conversation?

A. The meeting was over.

Q. Was there any statement by the I.W.A. or the I.L.W.U. as to whether or not they could get together?

A. Yes. The Woodworkers agreed to get together with them.

Q. Did the I.L.W.U. agree to that? [659]

A. Yes.

Q. Has the I.L.W.U., or I.L.W.U. Local 16, ever come back to tell you what the result of those conferences were? A. No.

Q. Was that the only time that you were contacted by the I.L.W.U. since you came here, or by the Local? A. No.

Q. There was another time? A. Yes.

Q. What was that time?

A. I arrived by Pan American early in the afternoon, and that same afternoon—I don't know how they found it out——

(Testimony of Freeman Schultz.)

Q. What arrival are you speaking of?

A. June 4, when I first came here.

Q. Go ahead.

A. The telephone rang and a man said his name was Chris Hennings. He asked me if I would appear at a meeting. He explained he was the Alaska Representative, as I understood it, of all C.I.O. Unions, as I understand it, and asked me if I was willing to come to a meeting of the Union.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and ask that it be stricken.

Mr. Banfield: It will be connected up.

The Court: If it isn't, it will be stricken. [660]

Q. Did he say who would be there?

A. No, he didn't.

Q. Did he say he was acting on behalf of Local 16 or the International, or at their request?

A. I didn't get it quite that way. I was new and didn't know what he was getting at. As I understood it, it was all C.I.O. Unions.

Q. Now, Mr. Schultz, if there had been no picket line, at the mill, what would you have been capable of producing in lumber in 1948?

Mr. Andersen: To which I object, may it please the Court, as incompetent, irrelevant and immaterial. I fail to see where the picket line has anything to do with that. The testimony is that there are a dozen entrances.

The Court: You can cross-examine on it. Objection overruled.

(Testimony of Freeman Schultz.)

A. As I found the mill when I arrived here in June in 1948 I would say that it was capable of producing in excess of one hundred thousand in an eight-hour shift. That would mean on two, in excess of fifty million in a year.

Q. Do you know what season of the year the plant—in the fall, how late could it have operated, in the fall? A. In 1948?

Q. Yes.

A. About the first of December it would have gone down. [661]

Q. Were the winter conditions such——

A. It began to freeze up the middle of November, the first of December. You can operate with some ice, but not too much.

Q. Would this figure of production allow for normal shutdown, accidents and interruptions?

A. Yes. Day after day you produce. I meant an average of one hundred—we think, one hundred is one hundred thousand—we think in terms of a unit being a thousand feet.

Q. Did the Juneau Spruce Corporatoin have on hand and available to it a sufficient quantity of logs to produce this amount of lumber in 1948?

A. Oh, yes.

Q. How many logs were in Juneau?

A. About eleven million.

Q. Did you have any logs any place else?

A. It seems to me every contractor in the country was after me as to when I would take his logs.

(Testimony of Freeman Schultz.)

Mr. Andersen: I move that be stricken.

Q. I meant, did the Juneau Spruce own any logs any place else? A. At Edna Bay.

Q. How many?

A. About two hundred thousand feet in the water, and nine to ten million feet down in the woods.

Q. Did you own any logs still in the possession of contractors? [662] A. No.

Q. Or contract loggers? A. No.

Q. Had the Company agreed to buy any logs from contract loggers? A. Yes.

Q. How much had it agreed to buy?

Mr. Andersen: To which I will object, may it please the Court, as not the best evidence.

The Court: Objection overruled.

A. As I remember it——

Mr. Andersen: I add a further objection to all this testimony that it is speculative.

Mr. Banfield: I am afraid my last question might be somewhat confusing. I will withdraw it and proceed this way:

Q. Mr. Schultz, were there logs available from private loggers? A. Yes.

Q. And do you know how much was available in 1948 from private loggers?

A. From June on, I had been advised how much would be available during the winter and spring.

Q. By whom?

A. Mr. Hawkin's report.

(Testimony of Freeman Schultz.)

Mr. Andersen: I object to that as hearsay. [663]

A. And copies of letters I have seen.

The Court: That is hearsay. It will be stricken.

Q. Could you have bought an additional thirty million feet of logs on the market? A. Yes.

Q. In Alaska? A. Yes.

Mr. Andersen: I object to that as speculative.

The Court: Objection overruled.

A. I could have got forty million.

Mr. Andersen: I move that be stricken as not responsive.

The Court: For the benefit of counsel, the objection which has been frequently made that the answer is not responsive, is available only to the party making the examination. Objection overruled and motion denied.

Mr. Andersen: I think your Honor is correct in that ruling.

Q. Did you have the tugboats necessary to bring these logs into the mill? A. Yes.

Q. How many did you have?

A. We have three large ones here, and then we have two small ones that can tow logs in a short area around Juneau, in addition to three large ones. [664]

Q. Did you have an adequate labor supply ready and available? A. Yes.

Q. And necessary financing to finance the mill and pay the operating expenses?

A. That is right.

(Testimony of Freeman Schultz.)

(Whereupon, the jury was duly admonished and the trial was adjourned until ten o'clock a.m. May 9, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness Freeman Schultz resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Mr. Andersen: Could I interrupt just a moment? I assume from the way the case is going plaintiff is getting near the end. In order for us to plan, if counsel could give us an idea when he will get through——

Mr. Banfield: If the Court please, I think we will be fifteen or twenty minutes with Mr. Schultz, and then we have another witness dealing with damages and bookkeeping figures. I don't believe we will be very long.

The Court: Is that the rest of your witnesses?

Mr. Banfield: One or two short witnesses after that.

The Court: Counsel is not interested in how many but when you will get through.

Mr. Banfield: We have only two short witnesses after Mr. Boles and we expect to finish today. [665]

Q. Will you state your experience in the lumber business briefly?

A. I have been manager or assistant manager of mills since 1940. I have been superintendent of mills since 1930, and I had various work as labor

(Testimony of Freeman Schultz.)

foreman and other work like that from 1925 until 1930.

Q. In other words, you have an experience of about twenty-four years in the lumber business?

A. Plus working in summertime when I was going to school, going to college.

Q. How many mills have you actually managed?

A. I would say about ten, seven at one time—small mills.

Q. You testified last week regarding the repairs done at this mill in 1948. If the mill were operating in the regular fashion, when would repair work be done?

A. During the winter shut-down period.

Q. How long would that be each winter?

A. Two months at least.

Q. Would there be any repair or maintenance work done regularly through the other ten months?

A. Oh, yes. Ordinary maintenance and repair. Things need to be replaced as you go along.

Q. Is this repair program completed now?

A. At Juneau Spruce?

Q. Yes. [666] A. No.

Q. Would you give us a comparison of the amount of repair work which you did in the year 1948 as compared with what you would have done if the mill operated in 1948 and then had a shut-down last winter?

A. If we had been operating two shifts during

(Testimony of Freeman Schultz.)

the current year 1948, we would have spent more money on repairs than we have now, due to the fact that chains and machinery wear out and have to be replaced. We have a maintenance crew all the time that the mill is operating.

Q. Was this repair work done during the year 1948 done with a large or small crew? Tell us how many men were used on that job?

A. We have used eight to ten men. It will vary a little bit.

Q. When did that crew go on repair and maintenance work in 1948?

A. As soon as the mill shut down in October.

Q. It has been a repair job from October until now? A. That is right.

Q. How many would you normally employ in the wintertime for your annual overhaul?

A. Of course that would be a shorter season, two months. Approximately twenty-five to thirty men.

Q. Did you buy or install any new machinery during 1948? A. No new machinery. [667]

Q. Did you install any new equipment of any kind?

A. Some new chain and some new sprockets and as we have made some improvements in the mill we used all the old material we could find there and we had to buy some, a very normal sum.

Q. Mr. Schultz, do you know the market value of logs at Juneau during 1948? A. Yes.

(Testimony of Freeman Schultz.)

Q. What was the market value of logs during that period? A. $23 at Juneau.

Q. That would be delivered to Juneau?

A. No. The practice in the northern half of Southeastern Alaska is that the logs are purchased at the logger's camp and the towing is for the account of the mill.

Q. That is $23 at the logging camp?

A. That is right.

The Court: Is that a log, or what is the unit?

A. A thousand feet of logs, Forest Service scale.

Q. $23 per thousand board feet; is that it?

A. Yes.

Q. Last week, Mr. Schultz, you testified regarding your investigations as to the possibility of disposing of lumber during the summer and fall of 1948 and up to the present time, I believe, and I questioned you as to what investigations you had made for disposing of lumber [668] through British Columbia. Do you remember your testimony in that regard? A. I think I do.

Q. Are you still of the same opinion, that your testimony was correct at that time?

Mr. Andersen: I will object to that as simply calling for a conclusion.

The Court: As I interpret it, it is only preliminary. I expect there is some change in the testimony; otherwise, it is merely repetition.

A. I believe at that time I testified that we had only investigated the port of Prince Rupert in

(Testimony of Freeman Schultz.)

British Columbia, and actually we investigated Vancouver, too.

Mr. Andersen: I want to interpose my previous objection, too, that it was hearsay. The objection was that it was hearsay and the same objection now, may it please the Court. He refers to this investigation we discussed last Friday.

The Court: Objection overruled.

Q. Did you investigate the possibility of unloading at Vancouver? A. Yes.

Q. Why have you now remembered this when you did not know about it before?

A. Well, Vancouver has not been a desirable outlet from [669] previous reports. We didn't pay much attention to it. At this time now it is not available to us.

Q. Did you make an investigation as to whether it has been available since the strike?

A. Yes.

Q. What——

Mr. Andersen: I object. The same objection.

The Court: The thing is, if they could use it as an outlet, rather than if it is available.

A. I was told the longshoremen would not unload our barges.

Mr. Andersen: I object to that as hearsay.

The Court: Unless connected with one of the defendants it would be hearsay.

Mr. Banfield: It should be stricken.

The Court: It will be stricken then.

(Testimony of Freeman Schultz.)

Q. Do you know whether it could be used as a port through which you could ship lumber?

A. It could not be.

Mr. Andersen: I object.

The Court: Objection overruled.

A. The longshoremen would not unload the barges.

Mr. Andersen: I object. The same objection.

The Court: Objection sustained.

Q. I asked if you knew? A. Yes. [670]

Mr. Andersen: Obviously, if the Court please, the answer calls for hearsay.

The Court: Yes. The important thing is whether or not they could use that port or did use it, not so much what led him to that conclusion.

Q. Mr. Schultz, as the result of this picketing and the other actions of the Longshoremen's Unions which have been described here, if you should start up the mill now, would there be any damages ensue hereafter?

Mr. Andersen: I object to that as purely speculative.

The Court: I don't understand. Repeat the question.

Court Reporter: "Mr. Schultz, as the result of this picketing and the other actions of the Longshoremen's Unions which have been described here, if you should start up the mill now, would there be any damages ensue hereafter?"

The Court: I think you should direct his atten-

(Testimony of Freeman Schultz.)

tion to something specifically if you ask it in that form, rather than permitting the witness to——

Mr. Banfield: I will withdraw the question.

Q. Have your markets and customers been affected by this strike?

Mr. Andersen: Same objection—speculation, hearsay and opinion.

The Court: Objection overruled.

A. Yes. [671]

Q. Explain that.

A. We have lost our customers.

Mr. Andersen: I move that be stricken, may it please the Court, for reasons heretofore mentioned.

The Court: I think it is a matter of knowledge on his part. Objection overruled.

Q. Mr. Prawitz testified he acted as an agent, his company was a commission agent for the Juneau Spruce. Are they willing to continue that relationship? A. Yes.

Q. Dant & Russell bought some of your lumber in stock at prices agreeable to the Juneau Spruce Corporation, is that the arrangement in effect there? A. Right.

Mr. Andersen: That calls for a conclusion.

Q. In what way then are your markets affected?

A. The customers that they had have been supplied from other sources, and now we will have to go back and show the advantages of our lumber as compared to lumber they have been buying.

Q. Were your shipments through Dant & Russell miscellaneous or special orders?

(Testimony of Freeman Schultz.)

A. Special orders or cut to specifications.

Q. Have your retail yards in Anchorage and Fairbanks been affected? [672] A. Yes.

Q. In what way?

A. We have not been able to supply them with all the lumber that they could sell.

Q. Is that due to this strike?

A. That is right.

Q. Do you know how much business was lost?

Mr. Andersen: I assume my objection runs to this as speculative, hearsay and opinion?

The Court: Objection overruled.

Mr. Andersen: I don't want to make an objection each time. May this objection run?

The Court: The record may so show.

Q. Are there any other items of damage of that nature?

A. We have lost a lot of our key personnel that will necessarily have to be trained.

Mr. Andersen: It is not responsive. I move it be stricken.

Mr. Banfield: We think it is, your Honor, a proper question and a proper answer.

The Court: Yes. Objection overruled.

Q. Has the lumber which you have had on hand during 1948—I am now speaking of the lumber which you still have on hand—has that been affected by this strike? A. Yes. [673]

Q. In what way?

A. Some is bowed, cupped, twisted, shaked, stained.

(Testimony of Freeman Schultz.)

Q. What do you mean by "shaked"?

Mr. Andersen: I object to that. It is not within the allegations of the complaint.

The Court: I am looking at your complaint. Do you contend it is within the allegations of the complaint?

Mr. Banfield: I think we have to show what damages occurred and we will have to show just what damages we are claiming and what damages we are not claiming. This witness testified he is unable to ascertain the exact amount of damages, and our intention—we are not asking for specific damages.

Mr. Andersen: If he is not asking, it is immaterial.

The Court: I think so too. If you are not asking, there is no purpose in going into it then.

Mr. Banfield: We are differentiating. We are going to show—we are asking only for what is definite and certain.

The Court: If anybody wants to differentiate it, let the defense differentiate it, if they think it is too general, but on your case I don't think it is necessary to go into that.

Mr. Banfield: Is your Honor waiting for a question or have you ruled on that?

The Court: If that is the only purpose—— [674]

Mr. Banfield: That is the only purpose.

The Court: I think the objection will have to be sustained to it then.

Q. Mr. Schultz, would it be practical or possible

(Testimony of Freeman Schultz.)

for the Juneau Spruce Company to ship to any port beyond Puget Sound? A. No.

Q. Why is that?

Mr. Andersen: May it please the Court, I don't believe we are concerned here with probabilities or possible practicalities. It is completely immaterial.

The Court: I think it would be relevant on a question of mitigation. Objection overruled.

A. There is machinery and equipment in Puget Sound to finish our product. It leaves here in a green state. There is machinery there to finish that. If we use our own equipment to tow it someplace—it is not ocean-going equipment——

Q. Could you insure for ocean-going?

Mr. Andersen: That is not material here.

The Court: If it limits their markets and hence increases their damages it would be relevant.

Mr. Andersen: I don't see on what basis—if it could be insured, that it would have anything to do with this complaint. [675]

The Court: If it limits their markets, and it is relevant I think on the question of damages. Objection overruled.

Q. Is the clear spruce and the shop grade lumber shipped from Juneau a finished product?

A. Not when it leaves here.

Q. What must be done to it before it can be used?

A. It is cut to sizes suitable for making doors, cabinets—it is kilned and has to be dried before it can be used.

(Testimony of Freeman Schultz.)

Q. Could you dry it here and ship it down there?

A. Yes, we could dry it here and ship it down there, but wood has an affinity for water and we have to ship it, and then it would be useless and we would have to go through the process down there.

Q. To sell in the eastern markets, shop and clears have to go through a finishing process?

A. The same way.

Q. Is that done on the East Coast?

A. Not to a great extent. It is done some in the Mississippi Valley, but not very much.

Q. Now, the common grades that you have described, where can you sell those?

A. Most anyplace that a house is being built.

Q. Are they finished when they leave here?

A. Yes. [676]

Q. Ready for use then?

A. They are ready for use.

Q. Where would you ordinarily dispose of your common grades of lumber?

Mr. Andersen: I think this line of questioning also is immaterial, may it please the Court.

The Court: Objection overruled.

A. First to our retail yards in Alaska and then to the markets in Oregon and California.

Mr. Banfield: If the court please, I believe there was some discussion before as to whether it was relevant to show the plans of this Company in the commencement of the operation season in 1948. I

(Testimony of Freeman Schultz.)

am not speaking now of a long range plan and what they intended to do that year. It is our contention if they operated they would be entitled to damages. I would like to ask the witness a question on that. I think the Court, under slightly different circumstances, stated that plans, etc., were not admissible. I think I would like to show the intention for that first.

The Court: You mean beyond showing that you were going to operate in 1948?

Mr. Banfield: No, I intend to show they did intend to operate for 1948.

The Court: I don't think any ruling of mine excluded that. You may go into that. [677]

Mr. Andersen: I object.

Q. Do you know what the plans were for operating the plant in 1948? A. Yes.

Q. What plans did you have?

A. To cut all the lumber we could cut.

Q. How much did you figure you could and would cut?

A. In excess of fifty million.

Mr. Andersen: I object to that as a conclusion.

The Court: Objection overruled.

Q. That would be fifty million board feet?

A. Board feet.

Q. Could that have been done with the equipment which was installed there and in the condition in which it was installed there at the time you arrived here in 1948?

(Testimony of Freeman Schultz.)

Mr. Andersen: Same objection.

The Court: Objection overruled.

A. Yes.

Mr. Banfield: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. I understand, Mr. Schultz, that you first came here in January, 1947, and then apparently moved up here in June of 1948? [678]

A. That is right.

Q. And I assume that between those two dates you weren't here. Were you in Portland?

A. No.

Q. Where were you between those two dates?

A. I lived in Coos Bay.

Q. At that time you were an employee of the Coos Bay Lumber Company, is that right?

A. That is right.

Q. Between those two dates you weren't here. I believe you testified that you put some money into this Company also?

A. That is right.

Q. Who are the principal stockholders of this Company?

A. Gene Card that testified here is a stockholder. Stanley Johnson is our mill foreman, is a stockholder. D. D. Dashney, Coos Bay Lumber Company; J. W. Forester; Jens Jorgenson; Arthur Christianson; E. M. Boley; Mr. Chaney, Coos Bay

(Testimony of Freeman Schultz.)

Lumber Company; Dant & Russell and Paul Murphy; that will cover it.

Q. I assume from what you say only two of you live here. The rest, I assume, live in Oregon someplace?

A. Practically all of them live in Oregon, most of them in Coos Bay—workers in the mill, the same as I do.

Q. Does Mr. Chaney live in Portland?

A. He lived in Portland. [679]

Q. When you came up in January, made a survey and found the mill to be not necessarily held together by haywire, but in bad shape——

A. That is right.

Q. Not necessarily haywire?

A. Some haywire, and one horse.

Q. In pretty bad shape?

A. Yes, that is right.

Q. You used the word "prudently" when you talked about the expenditure of money. You bought equipment and bought a tub and whatever you thought necessary in order to operate this business, is that right?

A. That is right.

Q. I assume you are the person who decided what was to be spent or made recommendations?

A. No, sir.

Q. Who did? A. Mr. Hawkins.

Q. Did you also?

A. As a member of the Board of Directors, those subjects came up.

(Testimony of Freeman Schultz.)

Q. I thought I understood you to say originally, you originally determined the policy of the Company with respect to expansion and equipment? I may be in error.

A. As I remember, I said I participated—I didn't actually [680] determine it.

Q. This is preliminary. Whatever was spent you agreed to it? Some couple hundred thousand dollars was spent?

A. Right; as the Board would know in Coos Bay of the business being done here.

Q. About how much money was spent?

A. On repairs?

Q. Repairs and improvements, to get rid of the haywire.

A. Approximately one million and a quarter dollars.

Q. Altogether? A. Altogether.

Q. And I understand from what you say your idea was to get into production?

A. On a steady sustained production.

Q. You, of course, didn't want to let the expenditure of any amount of money necessary for operating the mill to stand in the way of operating the mill? Any improvements you felt necessary you did? A. That is right.

Q. And any amount of money you felt necessary to spend so the mill would operate without trouble you spent?

A. Not necessarily any amount.

(Testimony of Freeman Schultz.)

Q. You mentioned over a million dollars?

A. That is right.

Q. With respect to all that money, doesn't what I say hold [681] true?

A. There were some strings attached. It was not just like water flowing.

Q. I don't like to throw money away. I would assume you are the same type of person?

A. We hollered about it.

Q. You didn't waste it?

A. We didn't waste it.

Q. You tried, as you said on direct examination—you tried to spend, not necessarily frugally, but certainly prudently?

A. That is right.

Q. And as you sized up the situation here, what you decided to try and do was do everything reasonable in relation to the situation as you saw it to get the mill into efficient operating order?

A. That is right.

Q. There is no qualification to that at all, is there? A. No; no qualification.

Q. That applied particularly to the physical improvement of the mill, did it not? A. Yes.

Q. And, of course, also applied or should have applied, to all other aspects of the lumber operation?

A. The plant site as well as the physical properties of the [682] mill.

Q. Personnel, logging camps——

A. That is right.

(Testimony of Freeman Schultz.)

Q. And even the green chain?

A. Even the green chain.

Q. And I think you used the word "reasonable" —I use the word "reasonable" in the sense that you certainly would not, as operating Manager of this mill, condone the unnecessary expenditure of money to do something not required, nor would you condone not spending some money which the mill should spend for a really efficient operation?

A. If within my knowledge; that is true.

Q. Of course, for efficient operation firms have to spend, at one time or another, spend a little more money than is cut out?

A. That is right.

Q. In the operation of big industry, and this is a big industry, isn't it? A. No.

Q. We will say it is a fair-sized mill.

A. That is right.

Q. And what I have said applies to that also—in the expenditure of money you certainly don't condone—that is the wasteful expenditure of money —but insist that anything [683] reasonable, so far as operation of the mill is concerned, be done. That is true, isn't it? A. That is right.

Q. From what you said I assume you sell a great deal of lumber on contracts?

A. I don't understand what you mean by "contracts."

Q. Don't you have orders?

A. Yes, definite orders.

(Testimony of Freeman Schultz.)

Q. Definite orders are, of course, contracts, aren't they?

A. I didn't understand what you meant by "contracts."

Q. Well, aren't they? A. Yes.

Q. If you get an order from Black mill for so many feet of lumber and an order from Gray mill for so many feet of lumber, do you ever interchange orders? Suppose Black mill says, "Sell that to Gray Mill"?

A. No. We will ship to Gray mill, but Gray mill will pay for it. There is no trading of lumber.

Q. The order from Black mill is shipped to Gray mill and Black mill says, "We will get the money from them and pay you." That is your understanding?

A. We will buy lumber. We will sell lumber. There is no trading in behind.

Q. What do you mean, "trading"?

A. We won't say to Gray mill, "We need one hundred thousand [684] feet at Anchorage and we will trade you for someplace else."

Q. Suppose you have an order from Black mill and Gray mill phones in and says, "It is o.k. with use to ship it to Black." Do you ever do that?

A. Yes.

Q. You spent quite a length of time improving the mill, didn't you? A. Yes.

Q. Over how long a period of time?

A. What period are you talking about?

(Testimony of Freeman Schultz.)

Q. The time you first came up.

A. There was no period of repairs at that time.

Q. When did you start to repair it?

A. After the mill shut down in the winter of 1947-1948.

Q. Did you do normal repairs?

A. Normal operating repairs, of course, as the mill was going along.

Q. I assume sometime in April you started doing more repairs and improvement?

A. I don't understand.

Q. It is safer to say you don't understand. When you came in January you found what we both characterized as a haywire mill.

A. Yes. [685]

Q. You appraised it?

A. And turned in a report.

Q. You appraised it as to value? A. No.

Q. What did you appraise?

A. As to the plant site, the type of machinery and equipment here.

Q. And you, in other words, made what would be called an operating survey rather than a purchase survey? A. That is right.

Q. Have you ever made a purchase survey?

A. No. I have made this same type of survey at least eight or ten times.

Q. An operating survey? A. Right.

Q. I mean a purchase survey—we will say inventory and machinery not site value. You didn't do that here? A. No.

(Testimony of Freeman Schultz.)

Q. Do you know if anybody did that, if anybody?

A. After I was up and looked it over Mr. Chaney was up and looked the property over and Mr. Dashney and Mr. Boley looked the property over.

Q. Did I understand Mr. Hawkins made a value survey? A. No.

Q. He didn't? [686] A. No.

Q. When was this corporation formed?

A. When the property was taken over.

Q. And that was sometime, probably the first of 1947?

A. That is right, formed for that purpose.

Q. It wasn't Mr. Hawkins who made a valuation survey of the property?

A. He didn't say how much was sawmill value and——

Q. It wasn't he who did it? A. No.

Q. One of these other gentlemen?

A. That is right. It was an accounting problem.

Q. How many meetings did you have altogether with the longshoremen here? A. One.

Q. That was when?

A. When Mr. Albright and Mr. Pearson came to my office.

Q. That is the only meeting you had?

A. That is the only meeting.

Q. That is the meeting where they went to you to negotiate a contract?

(Testimony of Freeman Schultz.)

A. That is right.

Q. And the meeting lasted a couple minutes or so?

A. No, I would say we were there about an hour or maybe longer.

Q. And you, of course, refused to negotiate with them at that [687] time?

A. I am not sure just what you mean by "negotiating." We talked.

Q. Let's not have any argument over that word. "Negotiate" isn't "arbitrate"; it isn't "conciliate." "Negotiate" means where they talk among themselves and try to reach an agreement between themselves, some ultimate aim or desire. You understood it when the longshoremen went down to talk to you? By the way, when was it?

A. I would say the middle of November, 1948.

Q. I had here in October.

A. It could be.

Q. In other words, they went down to talk to you about negotiating a contract with them, that is, Local 16, for the longshore work. Isn't that the essence of it? A. That was the purpose.

Q. That was the essence of it, and there was no negotiation; isn't that true, sir?

A. No; we negotiated. We talked. We didn't arrive at a conclusion.

Q. You took the position you had nothing to negotiate, isn't that true?

A. No. We suggested to them the Woodwork-

(Testimony of Freeman Schultz.)

ers and Longshoremen get together. They are the ones that had the disagreement.

Q. That meeting was when? [688]

A. 1948.

Q. You suggested they get together?

A. Yes.

Q. In October, 1948, you told the longshoremen, "Get together with the Woodworkers and whatever is agreeable with the Woodworkers is agreeable to us."

A. No. If they made a plan and that was agreeable, I would carry it on to headquarters.

Q. You suggested to the longshoremen, the Woodworkers not being present——

A. They were.

Q. The Woodworkers being present at the meeting, or having a representative there, that they hold a meeting among themselves and thereafter come back to you?

A. If they could get together.

Q. Implicit in that was that if they could get together it would be all right with you?

A. I would recommend to the Board of Directors of our Company.

Q. You would recommend to the Board, you would accept anything worked out between them?

A. Not anything.

Q. Any reasonable thing?

A. That is right.

Q. The word "reasonable" covers a lot. That was in your mind? [689] A. Yes.

(Testimony of Freeman Schultz.)

Q. That was the view of the mill as expressed by you in October of 1948?

A. That is right.

Q. Didn't you tell them in that meeting you would not negotiate with them at all about longshore work?

A. No, I didn't tell them that.

Q. Didn't you tell them at that time that it was sort of a necessary condition that they first get together with the I.W.A. before you would talk to them? A. That is right.

Mr. Andersen: That is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Schultz, is Mr. Hawkins also a stockholder? A. Yes.

Q. Mr. Schultz, Mr. Andersen asked you several questions at one time there, sort of stringing out his question, and ended up by asking you how much money you spent in getting rid of the "haywire." Your answer was a million and two hundred and fifty thousand dollars.

A. I didn't understand it, that it was entirely getting rid of the haywire.

Mr. Andersen: I didn't mean it in that way.

A. It was plant and equipment altogether.

Q. And purchase of logging equipment?

A. And improvements down at the plant.

Q. And purchase of land?

(Testimony of Freeman Schultz.)

A. And purchase of land. In one lump sum, as I understood his question.

Q. Do you know how much money the Company has in this Company now?

A. In excess of two million dollars.

Mr. Strayer: Your Honor please, counsel questioned Mr. Schultz regarding the trading of orders. We thought it was preliminary and didn't object. He didn't pursue it. If he claims anything for it I think we are entitled to know what it is so we can examine this witness further, otherwise it should be stricken.

Mr. Andersen: Well, if an objection to that line of questioning was in order, the objection should have been made at the time. There was no objection.

The Court: This isn't an objection to it. This is a motion to strike unless the materiality is shown.

Mr. Andersen: I think the materiality shows very clearly. I think he probably sees the same thing I do, I might so state to the Court.

Mr. Strayer: I see no materiality at all.

The Court: I am in the same state of mind as counsel. [691]

Mr. Andersen: I will tell your Honor the purpose. This is going to be an argument. I will state it very briefly, though I think it is unfair. Mr. Schultz, on the witness stand—I can't quote the record verbatim—but in substance he testified that sometimes he would have an order from Black Company and the lumber will be shipped to the

(Testimony of Freeman Schultz.)

Green Company. That is a contract, as he testified, and lumber ordered by Black Company and not Green Company, and Green and Black Company adjusted the payments themselves. That is what he testified to. If we change that to I.W.A. and Local 16 we have the same situation. They have a contract with Black Company to sell the lumber and he sends the lumber to the Green company. Earlier he testified they had a contract with I.W.A., which will be Black Company. Black Company said, "Let Green Company have it." Mr. Hawkins said that I.W.A. said, "Let Local 16 have it." What he can do with Black Company and White Company he can do with I.W.A. and Local 16. I brought that out simply as a parallel, your Honor.

The Court: The motion to strike is granted. That testimony is stricken.

(Witness excused.) [692]

MARC S. BOLES

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. State your name.

A. Marc S. Boles.

Q. What is your occupation?

A. I am accountant for the Juneau Spruce Corporation.

(Testimony of Marc S. Boles.)

Q. How long have you been employed by the Juneau Spruce Corporation?

A. Since April 1, 1948.

Q. And have you been stationed here at Juneau all that time?

A. I was employed on the first. I didn't arrive in Juneau until the sixteenth.

Q. What qualifications do you have for this position?

A. I am a graduate of the University of Idaho. I majored in accounting. Since that time I have been doing nothing but accounting work. I have passed the Certified Public Accountant's examination and I am a Certified Public Accountant for the State of Oregon.

Q. And how much practical experience do you have in bookkeeping and auditing?

A. Eight years.

Q. Do you have with you a financial statement of the Juneau [693] Spruce Corporation?

A. Yes, I do have.

Q. And for what period has that been prepared?

A. For the fiscal year ended March 31, 1949.

Q. What is the fiscal year of the corporation?

A. From April the first to March 31 the succeeding year.

Mr. Banfield: If the Court please, I would like to have this statement marked for identification.

The Court: You are not going to offer it?

Mr. Banfield: We will offer it by this witness

(Testimony of Marc S. Boles.)

later. It is just in order as we go along——

The Court: An exhibit is marked for identification only when it is intended to offer it by some other person.

Mr. Banfield: Then we won't.

Q. Mr. Boles, will you identify page one of that exhibit?

A. Page one is the balance sheet or assets side of the balance sheet of the Company. I have March 31 of 1949 and 1948.

Mr. Andersen: I would like to interpose my general objection as far as the International is concerned to the testimony of Mr. Schultz.

The Court: You may make such an objection. The ruling is the same.

Mr. Andersen: And to this witness' testimony, as far as the International is concerned, and plus the additional [694] objection that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. Mr. Boles, on this financial statement you have an item here of inventory "Logs in Booms." Will you tell us the basis of value of the logs?

A. Those logs are valued at $23 a thousand. If you look at page thirteen of this exhibit you will find a complete statement of the footage and of the valuation per thousand log scale feet.

Mr. Andersen: In the interest of time, I fail to see the materiality of going into all the assets of the Company. We have already had two wit-

(Testimony of Marc S. Boles.)

nesses testify to the Company—Mr. Schultz just testified to the assets of the Company. I don't see that they have to break it down.

The Court: It doesn't seem necessary to take it item by item.

Mr. Banfield: Only those concerning which there might be some question, in arriving at the value. In other words, if there is any discrepancy between the market value and the book value, we put them in and explain them, or it might be somewhat misleading. This whole balance sheet—not so particularly in this—but it will substantiate the profit and loss. We are not going over it item by item, but only those concerning which there might be some question.

Mr. Andersen: I don't see why they have to go over [695] the balance sheet. They have testified. This will consume a day.

Mr. Banfield: No, it wouldn't.

Mr. Andersen: If it is twenty minutes it is too much. I just said it is not material.

Mr. Banfield: The balance sheet is not, your Honor, but the profit and loss is. This is tied in together.

The Court: You have already shown what you claim the losses are that were incurred.

Mr. Banfield: I am sorry, your Honor. We haven't.

The Court: You haven't?

Mr. Banfield: No. In the opening statement

(Testimony of Marc S. Boles.)

we have stated what it would be. We haven't shown it.

The Court: There is no use going over item by item what the exhibit shows.

Mr. Banfield: No; I am not going to.

The Court: Make it as brief as possible. You may proceed.

Q. What is the basis of the value of the lumber listed in the inventories?

A. It is valued at market prices f.o.b. Juneau.

Q. What is the total investment of the Company as of March 31, 1949, as shown on this balance sheet?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and he has already asked that. [696]

The Court: Objection overruled.

A. We had outstanding capital stock $1,450,000 in addition to which we had a bank loan the total of which was $760,000.

Q. What is the total assets as shown by this exhibit? A. $1,823,986.50.

Q. Now, is this balance sheet based on the entire operation of the Company or just the sawmill?

A. It is based on the entire operation.

Q. Would it include the items in the retail yards? A. It would.

Q. Will you identify page four A.

A. Page four A is the manufacturing and overhead cost summary of the Company for the year ended March 31, 1949.

(Testimony of Marc S. Boles.)

Q. And does that summary show the profit and loss of the sawmill operation at Juneau?

A. It does.

Q. And what is the amount of profit or loss for this period? A. $558,440.07 loss.

Q. Would there be a different profit and loss if you were to take into account your retail yards?

A. Yes, there would.

Q. Where is that reflected?

A. Page six of this exhibit, the profit and loss summary.

Q. And in what way would it differ? [697]

A. The retail yards of the Company made money during the last fiscal year. In order to consolidate our net profit or loss, the profits from retail yards are deducted from loss in the sawmill operation.

Q. What phase of the Company's activities are included in the profit and loss statement, Exhibit 4A, which shows a loss of five hundred and fifty eight thousand and some odd dollars?

A. The logging and sawmill operations of the Company, with the exception of the box factory.

Q. Do you have a separate exhibit showing the profit and loss of the operation of the box factory?

A. That is detailed on page five of this exhibit.

Q. I call your attention to Exhibit 3A and ask you—there is an item there stated as an expense for logging operations of towing rafts, $66,814.08. Will you explain what you mean there by towing rafts?

A. That is the expense incurred by our tow-

(Testimony of Marc S. Boles.)

boats as detailed on page 14F of this report for the last fiscal year.

Q. In other words, that is the total expense of operating the boats? A. That is correct.

Q. Does that include depreciation of them?

A. Yes.

Q. Not necessarily just the expense of towing rafts? [698] A. No.

Q. Had they been put to other use during this period?

A. We tried to find all the work we could to limit the loss as much as possible.

Q. Have you found other work for them?

A. Some.

Q. How much was received from the operation of the boats? A. $22,179.04.

Q. The next item on page 3, on this page, is Logging Depreciation, $59,600. Will you explain what this is?

A. That is depreciation on our equipment at the Edna Bay camp, yarders, caterpillars, road building equipment, fire fighting equipment and all other miscellaneous equipment at the logging camp, to operate efficiently.

Q. On the profit and loss statement as shown on page 4A and as shown on page 6, have you included the income from these boats as income of the sawmill operation?

A. It has been so included.

(Testimony of Marc S. Boles.)

Q. And you deducted the expense from the total income? A. True.

Q. And deducted depreciation from your income? A. That is true.

Q. This appears to be a statement which includes not only the year but the month of March. Can you explain that?

A. This is our usual financial statement which we prepare [699] each month for submission to the Board of Directors, and we use this final in each month to give the complete picture for the entire year.

Q. In other words, it shows everything during the month of March, and in addition, accumulation of everything for the year? A. Yes.

Q. One being in one column and the other being in the other column? A. Yes, sir.

Q. Now referring to page six of the financial statement you show here "Net Loss-Juneau Sawmill and Logging Camp-Above" $522,314 and some credits against that at the bottom of the page. Will you explain that?

A. We incurred certain expenditures during last winter which led to improvement. There were repairs to the sawmill from November 1 to March 31. We moved the big retail shed from the center of the yard, too, and built a fence completely around the property. We replaced rotten dock with rock fill, $27,493.55 having been eliminated from our recorded loss for the year.

(Testimony of Marc S. Boles.)

Q. Valuing that against the loss, what is the final resulting loss to the Company from its sawmill and box factory operation?

A. $524,821.37. [700]

Q. What standards have you used in the preparation of this financial statement, balance sheets, profit and loss statements, etc.?

A. It is prepared in accordance with generally accepted accounting and auditing principles and procedures and I used all the items and principles needed to properly present this statement.

Q. Turing to page seventeen—no, I am sorry, I got the wrong reference here—does this statement here reflect the actual loss of the Company for the period? A. It does.

Q. And what was included in income in preparing this profit and loss statement, what items did you include in the income?

A. All sales of the Company and other miscellaneous receipts as recorded through the year.

Q. I would like to have you answer that again and explain what sales.

A. I included all sales of the Company to outsiders, as well as transfers to our own retail yards, as income to the sawmill operation.

Q. You transferred to the retail yards at what value? How much would be charged to the retail yard and be credited to the account of the sawmill?

A. We charged our own retail yards the net sale price [701] we would realize on a sale to any other person.

(Testimony of Marc S. Boles.)

Q. And what in the income did you include besides sales?

A. A small amount of miscellaneous receipts from rentals of our houses in Douglas and from miscellaneous equipment which we rented, principally one yarder.

Q. In other words, your receipts consisted of sales and these miscellaneous amounts?

A. Right.

Q. An income from towing boats?

A. That was included.

Q. Generally speaking, what did your deductions from income consist of?

A. I am sorry, I don't follow your question.

Q. On your profit and loss statement you have shown expenes, deductions from income. What were the expenses, broadly speaking, as reflected in this statement? Does it consist of the operation of the sawmill or what does it consist of?

A. Are you referring to the deductions on page six?

Q. Yes; on page six, where you show the receipts of the Company, then you show expenses incurred which may lead to some amount of permanent improvement.

A. That was the expense which we incurred in making repairs to our sawmill from November 1, 1948, to March 31, 1949, the labor and material of which was $18,191.26. We moved [702] the big retail shed. That cost——

(Testimony of Marc S. Boles.)

Q. I am sorry, that isn't what I meant to get at. I mislead you there. Turning to page 3A and 4A, I want you to summarize for the Court and jury here just what these expenses consisted of that you have deducted from income in order to arrive at this loss.

A. Principally depreciation, insurance costs and the cost of maintaining watchmen and the cost of maintaining the men whom we—or whom we knew we had to keep if we ever hoped to get logging and sawmill operation going again.

Q. All the men who are working are included?

A. Yes.

Q. How many watchmen are there?

A. At present five.

Q. Does it include the logging camp expenses?

A. It does.

Q. Do you have to have personnel down there now? A. Yes.

Q. How many?

A. At the present time four men.

Q. What do they do?

A. Two men are there principally as watchmen. We have two men there now who are cleaning up our logging equipment, trying to repair the damages which the last year's idleness [703] has caused them.

Q. These watchmen—why do you have to have two watchmen there?

A. It is extremely dangerous to leave one man in an isolated spot. If something happened the other one could get help.

(Testimony of Marc S. Boles.)

Q. Do you have a time-clock punching system?

A. Not at the logging camp.

Q. Do you at the mill? A. We do.

Q. Do these expenses include the expense of operating the mill from July until October?

A. They do.

Q. Has the lumber or the money received from the sale of lumber produced last summer, has that been credited in this profit and loss statement?

A. It has.

Mr. Banfield: We will offer the financial statement in evidence, your Honor.

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

(Whereupon the exhibit was admitted and marked Plaintiff's Exhibit No. 14.)

Q. Mr. Boles, have you prepared anything to show the amount of profit and loss which the Company would have had, had [704] it operated this mill? A. I have.

Q. Do you—how many copies do you have here of that?

Mr. Andersen: Am I to understand there will be more testimony such as Mr. Prawitz gave?

Mr. Banfield: No.

Mr. Andersen: Isn't this the same exhibit?

Mr. Banfield: Mr. Prawitz testified to page seventeen of this exhibit and also one other witness testified regarding page eighteen.

(Testimony of Marc S. Boles.)

Q. Mr. Boles, for the purpose of the record here, will you briefly state what this document is that you now have and which we are discussing?

A. This exhibit is a complete statement of what the Company should have made had the Company been allowed to operate during the fiscal year April 1, 1948, to March 31, 1949.

Mr. Andersen: I move the answer be stricken, may it please the Court. This is a new line of questioning. I want to interpose the same objection. It is incompetent, irrelevant and immaterial, so far as the allegations of this complaint are concerned.

The Court: Objection overruled.

Q. In order that we can more logically follow your testimony later, Mr. Boles, will you state briefly how you went about the process of developing what this profit and loss [705] would have been if the Company had operated.

A. The first problems in the order in which they appear in this schedule——

Q. Excuse me. I believe if you started with seventeen and eighteen and then went back to No. one, I think it would be better.

Mr. Andersen: Regarding Exhibit seventeen which Mr. Prawitz testified about, I am going to object that it has been asked and answered. Unless Mr. Banfield tells me how many witnesses he is going to have——

Mr. Banfield: Mr. Prawitz testified on one question that was how much lumber would have been

(Testimony of Marc S. Boles.)

sold. This witness doesn't know anything about that.

Q. Will you explain page seventeen and eighteen.

A. Page seventeen and eighteen are the amount of production in terms of thousand board feet by grade, by description and by species which the Company would have had, had it have operated.

Q. How did you determine that?

Mr. Andersen: May it please the Court, I want to make another objection. This witness, as I understand, is allegedly testifying as an expert. He isn't on the selling end of this business. He is an accountant, and when he says "would have sold" I assume somebody told him they would have sold it. I don't want to accept this man's understanding, or [706] want him to testify on the figures, or I will have to be objecting to all of it as conclusions of the witness.

The Court: As keeper of the accounts, wouldn't he know.

Mr. Andersen: What was, but not what would have been sold.

Mr. Banfield: I am talking about species and grades.

Mr. Andersen: And what may have been sold, as I understood the question. May we have the Reporter read the question?

The Court: I understand that. There has been testimony in this case as to the amount of lumber

(Testimony of Marc S. Boles.)

that could have been produced and could have been sold. This witness is going to testify, as I understand it, to the breakdown.

Mr. Andersen: If he is just testifying to the breakdown——

The Court: Is the purpose to show anything else?

Mr. Banfield: If counsel will turn to page seventeen he will plainly see. If the Court please, this does not deal with volume, but with grades and how they are ascertained for any volume, if it is one hundred thousand or one hundred million. What I am asking the witness is how he determined in what grades the lumber produced would fall, regardless of the quantity.

The Court: Is it a breakdown of the lumber production? [707]

Mr. Banfield: Yes.

The Court: Objection overruled.

Mr. Andersen: Is the understanding that the witness can testify from figures but not what would have been done, so far as he personally is concerned?

The Court: That is what I understand.

Q. How did you arrive at these breakdowns, sizes, grades, species and quality typing of lumber?

A. We completely tallied or analyzed the lumber by grade, by species, by the type that was pulled from our sorting table during the month of August, 1948. Inasmuch as that lumber was pulled by shop, by clear, by common, in order to determine what

(Testimony of Marc S. Boles.)

classifications they would have fallen into within the major grades, we completely analyzed our shipments for the year 1947 and determined what percentage of each of these types of lumber would have been produced.

Q. On this page seventeen there appears here one row of percentages indicating that 15.54 per cent of your lumber would be spruce, 4.9 per cent would be hemlock, etc. Is that what was determined from the green chain pull?

A. That is correct.

Q. As indicated on the same page, it is shown that clear spruce, five by four by six and wider, vertical grain, B and better, would be 1.56 per cent, and the two by six and wider vertical grain, B and better clear spruce, would [708] be 5.14 per cent of the total spruce. Is that correct?

A. That is correct.

Q. And going on with the other sizes the same way? A. Yes, sir.

Q. Now what values did you assign to the production of each specific type of lumber? Where did you get your values to use in determining the value of the lumber produced in each one of these sizes and grades?

A. You mean total amounts?

Q. No. How did you determine at what price to sell rustic siding?

A. That information was furnished me by Mr. Prawitz.

(Testimony of Marc S. Boles.)

Q. If you will refer to page sixteen, which is a table of prices by grades as determined by Dant & Russell, I will ask you if you have one of those tables of prices before you?

A. There is one in this exhibit.

Q. I will show you here Plaintiff's Exhibit No. 13 marked for identification and ask you if that is the scale of lumber prices which you have used?

A. Those are the values we used in computing our total sales.

Q. Is that schedule introduced here marked for identification as Plaintiff's Exhibit 13, the same as this schedule which I have incorporated here in this full exhibit? A. It is. [709]

Mr. Banfield: If the Court please, for the purpose of this testimony here, I think this should be marked for identification, for identification in the record. What he has, Exhibit 13 for identification, is the same as page sixteen of this particular document.

The Court: If you are going to have him testify from more than one, you better.

Mr. Banfield: In this case there is a necessity which ordinarily doesn't exist.

The Court: Very well.

Mr. Banfield: I would like to have it marked for identification at this time.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 15 for identification. Just one sheet or the whole exhibit?

(Testimony of Marc S. Boles.)

Mr. Banfield: The whole exhibit, the whole thing, the whole document.

Q. Mr. Boles, is the document which is marked for identification as Plaintiff's Exhibit No. 13 identical with page sixteen of the document marked for identification Plaintiff's Exhibit 15?

A. It is.

Q. Now, Mr. Boles, I would like to show you here two pages which are marked for identification as Plaintiff's Exhibit 10. Are those two pages identical with pages seventeen [710] and eighteen of the document marked for identification as Plaintiff's Exhibit No. 15? A. They are.

Q. Now, Mr. Boles, did you apply the values as shown on page sixteen of the document marked for identification as Plaintiff's Exhibit No. 15 in accordance with the production month by month?

A. I did.

Q. Of the plant. In other words, you mean to say if a certain item were produced in a certain quantity during the month of October, that you took the price off of that page sixteen and multiplied it by production and considered that the selling price? A. I did.

Q. Now on page eighteen there is set forth here a distribution of lumber by grades and by ports, that it would have been shipped through, apparently. Will you explain what that is?

A. It is the distribution of how the Company would have shipped its lumber to the various ports for sale.

(Testimony of Marc S. Boles.)

Q. Now, here under the Puget Sound ports you have shown a distribution of lumber in the amount of seven hundred and twenty seven thousand feet for the months April, May, June, July, August, but none in September, October, November, December, January or February. Why was that? [711]

A. There was a general waterfront tie-up.

Q. What do you mean by "general waterfront tie-up"?

A. The Unions operating for the steamship companies were on strike. There were no steamers in port and it was absolutely impossible to ship by steamer.

Q. You mean to say what you have done here is work out where this lumber would have gone to?

A. That is correct.

Q. What is the purpose of that?

A. So we could determine our transportation costs.

Q. And where do you find those transportation costs in this document marked Plaintiff's Exhibit No. 15 for identification?

A. On page two of that document.

Q. Going back to page one of the same document, could you tell us what the total sales would have been in dollars and cents for the fiscal year 1948-1949? A. $3,063,821.91.

Q. I didn't quite get that.

A. $3,063,821.91.

Q. I believe that is set forth on page one and two is it not? A. That is correct.

(Testimony of Marc S. Boles.)

Q. Of this exhibit. Now, how did you go about determining the expenses which would have been incurred in the operation [712] of the plant during the fiscal year 1948 and 1949?

A. By referring to past records of the Company I determined what number of men would have been needed to operate that plant, determined how much it would cost for that man on that job per shift—we had so many operable shifts per month—that would give me my total payroll. Our logs would have cost us, approximately would have cost us $23 a thousand.

Q. On the basis of what production has this document been prepared, production of lumber?

A. 38,268,000 board feet.

Q. Now, what would be the total log consumption necessary to produce that much lumber? Is that set forth on one of these sheets?

A. It isn't.

Q. Is it set forth in any manner whatsoever or in total?

A. Not as to the log scale feet that we would have used.

Q. How did you determine the amount of logs you would have converted into lumber?

A. The Company can get five per cent overrun in running logs. They would know the board feet would be the resultant difference, in terms of board feet plus five per cent as overrun and would deter-

(Testimony of Marc S. Boles.)

mine the amount of lumber of logs in terms of log scale feet, they would have to buy.

Q. What do you mean by "overrun"? [713]

A. By careful cutting, the Company is able to get more lumber out of a log than the integral amount of lumber of that log, as the logs are scaled on log scaling rules.

Q. The Forest Service scale, and that term is "log scale" and that is what you buy, and when you produce you get more lumber out of it than what there is to begin with? A. Correct.

Q. Why is that?

A. The scale rule—suppose you get out of a log in terms of lumber exactly what the log scale would show, providing you cut it into one inch lumber. Where you cut the log into two inch lumber you save kerf in the amount cut.

Q. That is where you get the extra production, is it?

A. Out of the saw kerf and out of the table. Logs are graded on the small end and on the diameter.

Q. The overrun comes out of the butt and the flare? A. That is correct.

Q. Did you ascertain what these logs would cost? A. I did.

Q. And what was the value?

A. $23 a thousand.

Q. Did you determine what the cost would be to deliver to Juneau? A. I did.

(Testimony of Marc S. Boles.)

Q. Where is that set forth? [714]

A. On page three of this exhibit.

Q. You have here various items such as for the boat "Santrina" operating labor, operating supplies, fuel and oil, galley supplies, repair supplies and expense, insurance and depreciation. How did you determine how much operating labor would be used?

A. By referring to page nine of this exhibit, I beg your pardon, it is page twelve, you will see how many men were needed to operate that boat, the amounts we paid that man for that month's work, the total of which is the amount it would have cost us for operating labor for that boat.

and weeks the boat would run?

A. These boats primarily were used to tow logs to the mill. It was necessary to operate those boats to bring enough logs in to operate the mill for that year. If there is no need for logs to satisfy our demand for this year, the boats could be tied up.

Q. Is that why you show less men aboard in December, January and February?

A. Correct, and the weather at that time also precludes towing of logs.

Q. And the sawmill, box factory, power house, machine shop, planing mill, shipping department, etc., did you go through [715] those in the same manner to determine how many men would be on each job. A. I did.

(Testimony of Marc S. Boles.)

Q. What did you use as a basis for determining that?

A. The past records of the Company.

Q. You would have some items of expense like office supplies? How did you determine how much office supplies you would use in a year?

A. In those cases where we were unable to determine the exact amount, we would use month by month—I checked the previous records of the Company and found what information I could and then would set the figure for that particular type of expense at the point where I knew the Company could not possibly exceed that cost. That would be the cost.

Q. How far did you go in increasing expense?

A. I generally doubled them from our previous records.

Q. Would your previous records be adequate to give a fair determination for this fiscal year 1948-1949? A. They were a guide.

Q. What do you find the total expenses of operation of the Company would have been for the fiscal year 1948-1949? A. $1,857,672.73.

Q. Would that include the expenses of operating the retail yards? [716] A. It would not.

Q. What items of expense would it include?

A. The operating or cost of the sawmill, logging costs, and the box factory.

Q. How about selling?

A. It includes selling.

(Testimony of Marc S. Boles.)

Q. The cost of selling? A. Yes, sir.

Q. Does this exhibit marked for identification as Plaintiff's Exhibit 15 reflect all the income which you would have had had the mill operated during that period? A. It does.

Q. How did you determine the number of shifts that would have been operated by the Company?

A. By the total number of days in the months which were operable.

Q. What do you mean, "operable"?

A. By eliminating Sundays and holidays, it gave us the number of shifts that we normally would have operated.

Q. How many shifts did you use?

A. Two, until March, 1949.

Q. For what period would this—what period did you use in preparing this?

A. The fiscal year April 1, 1948, to March 31, 1949.

Q. What period did you cut out for winter shutdown? [717]

A. The period of November 20 to the first of March, 1949.

Q. Mr. Boles, you show here that you have used the period April 1, 1948, to March 31, and the strike did not occur until April 10. Why did you use April 1?

A. It is practically impossible to segregate a statement for a short term period of ten days.

Q. Are the books kept on a daily basis or a monthly basis?

(Testimony of Marc S. Boles.)

A. They are kept on a monthly basis.

Q. You have the figures in your books down there as to production during the first ten days of April? A. I do.

Q. What would that production run in logs?

A. In terms of logs, about ninety seven thousand feet per shift.

Q. Do you know whether or not on a production of that amount under the expense the Company was at that time, whether or not a profit would have been derived?

A. There very definitely would have been.

Q. Has that profit been permitted to enter into your figures here as a part of the income of the Company? A. Yes.

Q. Have you included in these statements any damages for such items as the effect the strike had on your retail yards? A. I have not. [718]

Q. Or any losses of market? A. No.

Q. Anything of that nature? A. No, sir.

Q. How certain are you, Mr. Boles, that these expenses which you have listed here are not too small?

Mr. Andersen: That calls for obvious speculation on the part of the witness. How certain he is—that is a conclusion.

Mr. Banfield: If the Court please, in a case of this kind we have to prove——

The Court: Objection overruled.

A. In all cases where expenses are shown for

(Testimony of Marc S. Boles.)

this Company, there are far more—they are more than adequate to cover expenses the Company would have been put to in producing that lumber.

Q. You feel reasonably certain if you had operated your expenses would have been less than you show in Exhibit 15?

A. I am very certain.

Q. What would have been the net profit of the Company during the fiscal year April 1, 1948, to March 31, 1949, if the Company had operated and produced lumber and under the expenses which you have shown on this exhibit? A. $511,122.29.

Q. Now, Mr. Boles, have you examined the records of this [719] Company for the purpose of determining whether or not there were actually any members of the I.W.A. Local engaged in loading barges during the period April 1 to April 10, 1948?

A. I have.

Q. And how could you tell which men were members of I.W.A. and which were not?

A. We have the check-off list or the authorization from each of those employees for us to deduct from their wages and turn over to the Union the amount of their monthly dues.

Q. Their Union dues? A. Yes, sir.

Q. Were there many employees during the period April 1 to April 10, 1948, in the loading of Company barges with lumber who were members of Local I.W.A. M-271? A. There were.

Q. How many, do you know?

(Testimony of Marc S. Boles.)

A. Not off hand.

Q. What was it, to the best of your recollection?

A. About ten.

Q. Were there any more engaged in that work during that period who did not furnish you a check-off slip? A. Some, yes.

Q. Mr. Boles, referring to this exhibit marked for identification as Plaintiff's Exhibit No. 15, is this an accurate reflection of the amount of profit which would have been derived by the Company had it operated two shifts during the period indicated?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

A. It is.

Q. Now, Mr. Boles, if you had prepared this statement for just the period April 10, 1948, to March 31, 1949, would it have shown the same amounts or greater or less than it shows now?

Mr. Andersen: I object.

The Court: Objection overruled.

A. It would have shown a smaller amount. Will you repeat your question, Mr. Banfield?

Q. If you had prepared Plaintiff's Exhibit No. 15 marked for identification on the basis of only April 10, 1948, to March 31, 1949, would it show more profit or less than what you have shown here?

A. It would show the same amount.

Q. You think it would show the same amount.

(Testimony of Marc S. Boles.)

Mr. Boles, Exhibit No. 14—has that been prepared for the whole fiscal year, April 1 to March 31?

A. It has.

Q. And if the exhibit marked Plaintiff's Exhibit 14 had been [721] prepared only for the period April 10, 1948, to March 31, 1949, would the loss of the Company in its operations have been any greater or any less by reason of leaving out those first ten days?

A. It would have shown more loss for the period.

Q. It would have shown more loss for the period if you had not included the first ten days in April?

A. It would have.

Q. In other words, you must assume vice versa, there was a profit during those ten days?

Mr. Andersen: Same objection.

The Court: I didn't get that.

Q. Do you assume there was a profit for the first ten days of April?

Mr. Andersen: The same objection.

The Court: I think the record, as it is now, speaks for itself.

Mr. Banfield: I think so also.

(Whereupon the jury was duly admonished and Court adjourned until 2 p.m. May 9, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness Marc S. Boles resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows: [722]

(Testimony of Marc S. Boles.)

Q. Mr. Boles, I asked you this question regarding Exhibit 14, now I would like to ask it regarding Exhibit 15: what standards of accounting did you use in preparing it?

A. All the standard accounting procedures and practices generally used by accountants under the same or similar circumstances.

Q. At the time you testified regarding the profit and loss statement for the fiscal year 1948-1949, we did not have it marked for identification. I would like to know if all your testimony which you gave regarding the balance sheet and profit and loss statement for that fiscal year is with reference to the document now marked Plaintiff's Exhibit 14?

A. It is.

Q. And was all your testimony with regard to the loss of profits given with reference to the document marked for identification as Plaintiff's Exhibit 15? A. It is.

Q. Now, Mr. Boles, did you have any conversations during last summer with the pickets down there at the plant? A. Quite often.

Q. Did you have any conversations with them regarding the departure of a barge of lumber?

A. I did.

Q. Will you state when that conversation took place? [723]

A. On August 26 or 27, 1948.

Q. And with whom did you talk?

A. With Joe Gaines and Pete Rasmusson.

(Testimony of Marc S. Boles.)

Q. And what were they doing at the time?

A. They were picketing the plant.

Q. Were they carrying signs?

A. They were.

Q. What did they state.

A. Pete Rasmusson asked me where the barge was going and I just ignored him. Pete said "We know a lot of places where that barge could go and we intend to know where it is going and we intend to follow that barge."

Q. Mr. Boles, with respect to the repair work which has been charged into the books and reflected on the exhibits, or Exhibits for identification marked 14 and 15, what practice do you follow with regard to what is repairs and what is not repairs when you make book entries?

A. All items which are not connected with the actual handling of the main products are called by us "repairs and maintenance."

Q. What do you mean by that?

A. A sweeper or an oiler in the plant would be classified as repairs.

Q. A sweeper?

A. A man who sweeps and pushes trash on the chain carrying it [724] to the burner.

Q. That would be repairs? A. Yes.

Q. Why repairs instead of labor?

A. It is purely arbitrary on our part, due to the fact that we want to know what our man hours are in handling the main product and what are not connected with handling the main product.

(Testimony of Marc S. Boles.)

Q. General maintenance includes floor sweepers and odd jobs like that? A. It does.

Q. You might say keeping the property in condition to use, is that correct? A. Correct.

Q. Can you tell us how much you actually charged into the repair accounts in 1948?

A. A total amount of repairs for 1948 and '49 include the cost of building the fence and moving the retail shed, $117,503.41.

Q. For the fiscal year 1948-1949?

A. Yes, that is for the fiscal year 1948-1949.

Q. In setting up your prospective profit and loss statement here, which is Exhibit 15, how much did you allow for repairs if you had been operating in the regular fashion? A. $187,736.61. [725]

Mr. Banfield: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. Mr. Boles, as I understand it, all these figures to which you have testified, you received estimates, etc., you received from people in the operating branches of the business, is that true?

A. It isn't.

Q. Referring to Mr. Prawitz's testimony or some sheet he referred to, page seventeen, you saw that, didn't you? A. Yes, sir.

Q. What does that sheet purport to be?

A. That was furnished to me by Mr. Prawitz.

Q. What does that purport to be?

A. The sales price Dant & Russell could have sold our lumber at.

(Testimony of Marc S. Boles.)

Q. Sales price information received from other sources? A. Correct.

Q. That is what I said a moment ago, isn't that true?

A. If you will qualify your question, "Did you get your sales prices from outside" I will answer "Yes."

Q. That is all I referred to. Is that correct?

A. As far as sales prices.

Q. You got that information from Mr. Prawitz, is that true? [726] A. That is true.

Q. You didn't make any other check with respect to the figures from Mr. Prawitz?

A. No.

Q. You took those figures? A. Yes, sir.

Q. With respect to the information you got from Mr. Prawitz, all other information you used, I assume, you got from other men connected with the Company. Is that true? A. No, sir.

Q. Do you sell any lumber yourself?

A. No, sir.

Q. Do you work in the mill yourself?

A. No, sir.

Q. You just work in the accounting office of the Company here, is that correct? A. Yes, sir.

Q. Or is your office in Coos Bay?

A. Our office is here.

Q. You spent all your time in an office, isn't that true? A. Yes, sir.

Q. You don't have anything to do with the manu-

(Testimony of Marc S. Boles.)

facturing end of it at all? A. No, sir.

Q. You don't buy anything, do you? [727]

A. Yes, sir.

Q. Do you attend to purchases also?

A. To some extent.

Q. What do you buy?

A. Office supplies, also——

Q. What do the office supplies amount to in a year? A. They don't amount to anything.

Q. They don't amount to anything so you don't buy any? You don't manufacture and you don't buy, so didn't you get figures from people who were in the manufacturing or——

Mr. Banfield: I object to counsel's saying one thing and asking a question on another and when he was asked on the original question he started to say office supplies and he said they don't amount to anything. The witness did not have a chance to finish the answer and he was asked "isn't it a fact all your information was from somebody else?" The witness said "No" and then he cross-examines as if he got no information. He said he didn't get all his information. I don't think the Court should allow badgering of the witness.

The Court: He has latitude on cross-examination and is not bound by the exact statement. Objection overruled.

Q. Just go back on the one I asked, if you bought anything. You said yes, you bought office supplies. Isn't that true?

(Testimony of Marc S. Boles.)

A. I said for one thing I bought office supplies.

Q. For one thing you bought office supplies, and I asked what they amounted to and you said they didn't amount to anything, is that true?

A. Correct.

Q. Anything else?

A. I signed contracts for oil and gas for the Company.

Q. And that doesn't amount to anything?

A. On office supplies.

Q. That is your testimony, is that true?

A. Yes.

Q. What else do you buy?

A. I just said I signed contracts for oil and gas for the Company.

Q. Is that a momentous amount?

A. Quite a bit, fifteen thousand a year.

Q. Do you buy it, or does somebody else arrange for its purchase?

A. It is kind of a four-cornered deal in the office.

Q. You didn't exclusively handle the matter of buying gas and oil for the Company? A. Yes.

Q. You just signed the contracts? A. Yes.

Q. Somebody else arranged the purchase and you signed for it if it was a material matter? [729]

A. Correct.

Q. What else do you buy?

A. Off hand I would hesitate to say.

Q. With respect to all these figures then that have been mentioned here your source of information is somebody else, isn't that true?

(Testimony of Marc S. Boles.)

A. No, it isn't.

Q. What do you want the record to be?

A. I reviewed the previous records of the Company, and based on the previous records of the Company I made a forecast of the future.

Q. You made a forecast, what is called a professional guess—is that right? A. Yes.

Q. Now, I assume—by the way, when did you start to work on these figures?

A. Oh, about six weeks ago, with the exception of course of the regular accounting statement of the Company.

Q. Then I assume, you have had conferences with counsel? A. Yes, sir.

Q. And conferences with many other people?

A. Yes, sir.

Q. And you knew what you were getting these figures up for? A. Very definitely.

Q. In the interests of the Company? [730]

A. I work for the Company.

Q. You got them up in the interests of the Company, didn't you? A. Yes.

Q. Did you prepare these statements, these documents, in the same manner as you would prepare an income tax, calculation or report for the Company? A. Yes, sir.

Q. The same way? A. Yes, sir.

Q. The profits and loss in the same way as they are disclosed for income tax, as far as the Company is concerned? A. Yes, sir.

(Testimony of Marc S. Boles.)

Q. Again, for the interest of the Company—that is your primary interest here, is the interest of the Company, isn't that true?

A. Yes, sir.

Q. So to summarize this aspect of your testimony, you buy some small amount of supplies for the Company, you signed contracts when other people have arranged for the purchase of these commodities, and the rest of your testimony is a prognosis or guess or what the Company may have done in the future, barring all accidents and based on information from other people and the history of the operation of the Company? [731] A. No, sir.

Q. For how long?

A. One full year, the fiscal year May 1, 1947, ending March 31, 1948.

Q. How much of that time did the Company operate?

A. It operated the full mill up until late in November, the planing mill until January of 1948.

Q. You didn't take any figures subsequent to that fiscal year date?

A. Prior to that fiscal year date?

Q. Subequent to that fiscal year date.

A. Subsequent to that fiscal year date we were shut down.

Q. In this professional guess of possible profits, did you also include the time of the general strike on the Pacific Coast?

A. There was no necessity. We could still ship.

(Testimony of Marc S. Boles.)

Q. Did you include it or not?

A. Included.

Q. The ninety five day strike on the Pacific Coast, you are including that, aren't you?

A. Yes, sir.

Q. You included that period also in this itemization you made? A. Yes, sir.

Q. In other words, you included everything possible, didn't [732] you? A. Yes, sir.

Q. I understand, in a few instances you doubled estimates of expenses so you would be safe. Is that true? A. Yes, sir.

Q. During the period of the shut-down as you put it, key men were kept on the payroll?

A. Yes, sir.

Q. I guess that was wherever the plant operates, is that true?

A. I am sorry, I don't follow your question.

Q. You stated key men were kept on the payroll. Is that true? A. Yes, sir.

Q. Whether they did anything or not?

A. They were kept on, but they were kept busy.

Q. They were kept on the payroll?

A. Yes, sir.

Q. And if they were kept busy it was sort of making work? If you know——

A. I don't go through the plant every day. I am not sure of what every man in the plant was doing.

Q. You don't know? A. No.

(Testimony of Marc S. Boles.)

Q. Were men kept on the payroll at Juneau?

A. Yes.

Q. At the mill? A. Yes, sir.

Q. And other places where the mill operates?

A. The mill is only in Juneau.

Q. Other operations?

A. Our retail yards at Fairbanks and Anchorage were operating.

Q. You did keep key men on the payroll here?

A. Yes.

Q. A man named Flint—did you keep him in the manner which you have indicated?

A. Bill had been working for the Company.

Q. During the period I indicated?

A. Yes, sir.

Q. You considered him a key man, did you? You only kept key men, didn't you?

Mr. Strayer: The witness hasn't testified to that.

Mr. Andersen: I will withdraw it.

Q. You kept key men on the payroll, isn't that true? A. Yes, sir.

Q. And you kept Mr. Flint, is that true?

A. Yes, sir.

Q. And of course with respect to your profit and loss sheet there, page 4A of the report, and you refer to a loss of some five hundred-odd thousand dollars, loss of anticipated [734] profits?

A. Actual loss, sustained due to the shut-down.

Q. You didn't include a professional guess of profits? A. I did not.

(Testimony of Marc S. Boles.)

Q. You say just "actual loss"?

A. Yes, sir.

Q. In other words, the plant shut down for how long a period of time, according to your idea?

A. The plant was shut down on the morning of April 10, 1948.

Q. To July 19?

A. The plant got about half open on July 19.

Q. And shut down to what date?

A. October to the present time.

Q. The fiscal year—you have only gone to the end of the fiscal year? A. Yes, sir.

Q. And that would be March 31, if I recall correctly? A. Yes, sir.

Q. A period of some eight months, is that correct? A. Yes, sir.

Q. So by not operating your loss every month then, roughly in other words you lose $75,000 a month if you don't operate. Is that what I understand you to say? A. Approximately that.

Q. You lose $75,000 a month if you don't operate. Tell me [735] how you operate at a loss of $75,000 a month if you don't operate? Withdraw that, please. If you don't operate the plant you keep watchmen there, don't you? A. Yes, sir.

Q. And how much does that cost?

A. About $40 a week per man.

Q. And you pay taxes of course?

A. Yes, sir.

Q. Do you know what this corporation pays in taxes to the City of Juneau?

(Testimony of Marc S. Boles.)

A. I can look it up.

Q. Give me your estimate now, please.

A. About $7,200 a year.

Q. $7,200 a year in taxes to the City of Juneau. Well, when the plant is shut down you don't use any electricity to speak of, do you?

A. We use more. We are forced to buy more.

Q. You use more when shut down than when operating. A. No.

Q. When?

A. I say, we are forced to buy more. Ordinarily we generate our own.

Q. How much does your electrical bill amount to when you are shut down?

A. Between five and six hundred dollars. [736]

Q. A year or month? A. A month.

Q. When you are shut down?

A. Yes, We have to keep the motors and all the equipment warm.

Q. Four or five hundred dollars a month for electricity? A. Yes, sir.

Q. What other expenses do you have?

A. We keep the roof in repair and the dock in repair.

Q. Incidentals?

A. Depreciation expense, insurance——

Q. Depreciation expense is a bookkeeping item. I am talking about money that is actually spent.

A. Depreciation is just as much an expense. This equipment wears out.

(Testimony of Marc S. Boles.)

Q. Correct. It is an accounting item.

A. It rusts and goes to pieces.

Q. True. It was shut down three months. Did you write a lot of money off in depreciation from April through July?

A. It depreciates just as fast in this weather when it is sitting as when it is running.

Q. You included it as a loss in this?

A. Yes, certainly.

Q. How much did you include in here for depreciation of your plant during that shut-down period? [737]

A. This equipment depreciated about $125,000.

Q. In this short period of time you put down a depreciation figure of $125,000?

A. Yes, sir.

Q. This is what you call good bookkeeping practice? A. It is good accounting practice.

Q. I assume this charge of $125,000 depreciation was made pursuant to this good bookkeeping practice you talk about? A. Yes, sir.

Mr. Andersen: That is all, sir. Thank you. I am sorry, I have one further question.

Q. When did you have the conversation with these two men in front of the plant?

A. In the evening when we were loading the barge. I stopped to razz them.

Q. You stopped to razz them?

A. Yes, certainly. They had to work overtime that night.

(Testimony of Marc S. Boles.)

Mr. Andersen: Thank you. That is all.

Redirect-Examination

By Mr. Banfield:

Q. The $125,000 depreciation was over what period?

A. The entire fiscal year, April 1, 1948, to March 31, 1949.

Mr. Banfield: That is all.

(Witness excused.) [738]

JAMES FREDERICK CHURCH

(Whereupon James Frederick Church was called as a witness on behalf of the plaintiff and was duly sworn; respective counsel made statements to the Court with reference to the testimony to be elicited from the witness, and the witness thereafter testified; respective counsel thereafter made further statements to the Court; (the order for this transcript excluded the verbatim transcript of this portion of the record); whereupon the following took place:)

The Court: Let the record show that the stipulation is that the I.L.W.U. is a labor organization as within the meaning of the Taft-Hartley Act. The testimony of the witness will therefore be stricken as having been superseded by the stipulation and the jury is instructed to disregard it.

(Witness excused.)

TREVOR DAVIS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-Examination

By Mr. Banfield:

Q. Will you state your name, please.

A. Trevor Davis.

Q. What is your occupation?

A. Photographer.

Q. Have you been engaged in that business in Juneau for the past two years? [739]

A. Yes, sir.

Q. Mr. Davis, did you take any pictures of the Juneau Spruce Corporation?

Mr. Andersen: Show us the pictures and maybe we will stipulate.

Mr. Banfield: We would like to stipulate that these photographs were taken in the latter part of October, 1947—— A. 1948.

Mr. Banfield: 1948, I am sorry, and that they show lumber piled on the Juneau Spruce Corporation dock. We offer them for the purpose of showing the condition of the property at that time, particularly how the place was clogged up with lumber.

Mr. Andersen: We will stipulate that the pictures show that.

The Court: Let the record show the stipulation.

(Whereupon the four photographs were admitted and marked Plaintiff's Exhibit No. 16.)

(Witness excused.)

DOROTHY PEGUES

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-Examination

By Mr. Banfield:

Q. Will you state your name please. [740]

A. Dorothy Pegues.

Q. What is your occupation?

A. Editor and publisher of the Alaska Sunday Press.

Q. Is that published at Juneau? A. Yes.

Q. Do you also do writing and reporting on the paper? A. Yes, I do.

Q. Tell me, did you ever interview Mr. Vern Albright regarding the dispute between the Juneau Spruce Corporation and the longshoremen at Juneau? A. Yes, I did.

Q. Will you tell us the first instance of this briefly, what happened, when and where?

A. I believe the first time I actually interviewed him was in my office. It was back in June——

Q. Of what year?

A. This last, past June, of 1948.

Mr. Andersen: Did you say June, madam?

A. Yes.

Q. How did it happen you had this interview at that time?

A. At that time the dispute—the story at that time was about the progress Mayor Hendrickson had made in an effort to settle the dispute between

(Testimony of Dorothy Pegues.)

the longshoremen and the Juneau Spruce Corporation——

Mr. Andersen: I am sorry, I didn't hear you.

A. Between the longshoremen and the Juneau Spruce Corporation.

Mr. Andersen: You said something about settling something?

A. Yes, Mayor Hendrickson made an effort to settle the dispute.

Q. Did Mr. Albright give you a statement at that time?

A. Yes, he did. He came into my office and we talked about it and then he dictated a statement and I took it on the typewriter.

Q. Was that statement published in the paper as he gave it to you? A. Yes, it was.

Q. I will hand you page eight of the Alaska Sunday Press June 6, 1948, and ask you if this contains the statement made by Mr. Albright?

Mr. Andersen: I assume my same objection regarding the International will run?

A. Yes, that is the statement he gave me.

Q. Was there anyone with him at that time?

A. I don't recall. I believe there were several men came in at different times.

Q. Who did the talking A. Mr. Albright.

(Whereupon counsel for plaintiff handed the newspaper to Mr. Andersen.) [742]

Mr. Andersen: It is rather contemptuous to be

(Testimony of Dorothy Pegues.)

reading a newspaper in the courtroom, your Honor.

Mr. Banfield: It will be all right under the circumstances, I am sure. If the Court please I would like to offer this in evidence as a statement by Mr. Albright. The part we offer is for the purpose of showing his quotation on page eight.

The Court: If there is no objection it may be admitted.

(Whereupon the newspaper was submitted and marked Plaintiff's Exhibit No. 17.)

Q. Was Mr. Albright ever in your office again after that? A. Yes, he was.

Q. For what purpose?

A. To give us an interview regarding the longshoremen's strike.

Q. Did he dictate a statement?

A. Yes, on one occasion.

Q. How did you take it down?

A. On the typewriter.

Q. Do you know when that was?

A. On the second occasion?

Q. Yes.

A. It was for our July 4 issue. As I recall, it was the day before. I am not positive. [743]

Q. Who was with him?

A. He came with Mr. Wukich, who was at that time President of the Union.

Mr. Andersen: That is, of Local 16.

A. That is right.

(Testimony of Dorothy Pegues.)

Q. I will hand you here a statement or a sheet of paper and ask you if that is what you took down on the typewriter at that time?

A. Yes, that is it.

Q. Now, underneath this typed part there are a few written words "declared in a signed statement." How do those happen to be on there?

A. I asked him to sign the statement.

Q. You asked him to sign it?

A. I told Mr. Albright I wanted the statement signed.

Q. Did he sign it?

A. No. He told Mr. Wukich to sign it.

Q. Did Mr. Wukich sign it?

A. Yes, he did.

Mr. Banfield: I offer the statement in evidence, your Honor.

The Court: If there is no objection it may be admitted.

Mr. Andersen: I object as far as the International is concerned, of course. [744]

(Whereupon the exhibit was admitted and marked Plaintiff's Exhibit No. 18.)

Mr. Banfield: You may cross-examine.

The Court: Are you going to read these in evidence?

Mr. Banfield: If the Court please, I could read them.

The Court: You have to do it while the witness is on the stand.

(Testimony of Dorothy Pegues.)

Mr. Banfield: That is right.

Mr. Andersen: I won't make any point of that, your Honor .

Mr. Banfield: I desire, however, to read a portion of the statement here. "Mr. Albright made the following statement: 'The publishing of Mayor Hendrickson's Return to Work Proposal has the appearance of an employer inspired publicity dodge, the purpose of which is to shift the blame of the existing dispute between the Corporation and the Longshoremen from the shoulders of the Corporation to that of the Longshoremen. The meaning and intent of the Mayor's proposal appears innocuous to most persons unacquainted with the facts governing this dispute. It would result in Juneau longshoremen losing a great deal of their work for all time, establishing a dangerous precedent which in all probability would cause the spread of the dispute to all mill towns in Southeast Alaska.

"It also is a subterfuge by which the employer is enabled to avoid bargaining collectively with employees who have performed this work in Juneau for a number of years past. At no time during the existing dispute have the longshoremen refused to meet or bargain with the Mill Corporation. The Corporation has consistently refused to bargain with the longshoremen. [745] Such bargaining would, without a doubt result in resolving this dispute in a few hours.' " The other exhibit reads as follows: "Picket line remains. The I.L.WU. picket

(Testimony of Dorothy Pegues.)

line established April 10 is still being maintained and according to a statement made yesterday by officials of the Union, will be continued until such time as a satisfactory agreement to the Union is reached. 'Until a satisfactory agreement is reached in the dispute of the I.L.W.U. No. 16 with the Juneau Spruce Corporation, the Union will consider the crossing of its picket lines as strike-breaking.' Anthony Wukich, Union President, declared in a signed statement. Signed Anthony Wukich.''

Cross-Examination

By Mr. Andersen:

Q. I assume, Mrs. Pegues, during the course of the strike you wrote many articles?

A. Several.

Q. Several? A. Yes.

Q. How often does your newspaper come out?

A. Once a week.

Q. Didn't you have an article every week?

A. I don't believe so.

Q. You wrote many articles? [746]

A. It would be from April the tenth.

Q. Until the present time?

A. Yes, off and on.

Q. So you wrote plenty of articles?

A. How many do you mean by many? Maybe one week and not for another week?

Q. I asked if there was one every issue?

(Testimony of Dorothy Pegues.)

A. No, I didn't. I didn't have a story in every issue, I don't believe.

Q. You may have missed one, or every other one? It was going on for months, so really you have written many stories about it?

A. I don't know what you call many.

Q. Did you only talk to Mr. Albright on the two occasions?

A. One or two other times he came in with other people. We didn't talk much.

Q. Other people? Local 16 and Mr. Albright, and you talked to them?

A. As a matter of fact, I don't believe I talked to any of the other local longshoremen at any time.

Q. Except Mr. Wukich?

A. He was with Mr. Albright.

Q. You talked to both of them?

A. When they were together.

Q. You haven't talked to any other longshoremen about it? [747]

A. I don't believe so.

Q. Did you interview the Company from time to time?

A. Very seldom. About two or three times.

Q. You interviewed this Union how many times?

A. When they came into the office.

Q. Where did you interview the Company?

A. Over the telephone. I called them up, and one time I went down.

Q. In other words, you would phone the Com-

(Testimony of Dorothy Pegues.)

pany or go to the plant to interview them and you would wait for the longshoremen to come in?

A. No. I called them—I called Mr. Albright for a statement. They were more difficult to contact.

Q. When did you call Mr. Albright? Was that with relation to one of these articles?

A. Yes, I believe that first one, the story of June 6.

Q. The newspaper account? A. Yes.

Q. With particular reference to this other one, with particular reference to this Exhibit 18, which is the plaintiff's exhibit, I guess Mr. Albright talked to you at this time in substantially the same manner as he talked to you other times?

A. Yes. He came in to make a statement.

Q. It had relation to the same situation? That is, this [748] labor matter?

A. The picket line.

Q. And it was the same general situation?

A. It depended on what he was talking about. It was about this jurisdictional trouble.

Q. He might say different words to you each time but it related to this difficulty at the mill, isn't that true?

A. Different aspects of the case, as it went along.

Q. When he came in to you this time, this exhibit in my hand—you don't want to read it again?

A. No.

(Testimony of Dorothy Pegues.)

Q. He came in to you on or about the third of July and he came with Mr. Wukich, the President of Local 16. Is that true?

A. At that time, yes.

Q. He came to sign it and he said he couldn't?

A. He just said to Wukich "Sign it." He just said "Sign it, Wukich."

Q. Wasn't there any other discussion about it?

A. About why he should sign it?

Q. Did you ask Mr. Albright to sign it?

A. Yes.

Q. He didn't, and he had Mr. Wukich sign it?

A. That is right.

Q. Did you have any discussion about it? [749]

A. Yes.

Q. He and Mr. Wukich were there alone?

A. Yes, just the two of them, as I recall.

Q. The day before you went to press?

A. I believe it was on Saturday.

Q. July 3, as I understand your testimony?

A. Saturday, I am not positive.

Q. How long were they there before this was typed up?

A. I should say probably ten minutes. I don't know the exact time.

Q. Did you talk generally about the trouble at the mill?

A. Not too much. They were in a hurry and it was our busy day.

Q. He made the statement and out they went, is that correct? A. Yes.

(Testimony of Dorothy Pegues.)

Q. You didn't mention Mr. Albright's name in this statement?

A. No, not in this. It might be in some other part of the story.

Q. This is just one portion of the story?

A. That is right.

Mr. Andersen: Thank you.

Mr. Banfield: Thank you.

(Witness excused.) [750]

LUDWIG C. BAGGEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. State your name, please.

A. Ludwig C. Baggen.

Q. Mr. Baggen, what is your occupation?

A. I run a tugboat.

Q. What is the name of the boat?

A. "Santrina."

Q. Who owns the boat?

A. Juneau Spruce Corporation.

Q. How long have you been master of this boat for this Company?

A. I have been master of this boat ever since this Company has had it.

Q. Were you the master of the boat during August, 1948? A. Yes.

(Testimony of Luwig C. Baggen.)

Q. Did you take the vessel to Prince Rupert at that time? A. I did.

Q. And do you remember what the date was that you were in Prince Rupert? What dates you were there with the "Santrina"?

A. I couldn't remember off hand.

Q. I will ask you, Mr. Baggen, if you care to refresh your [751] memory from the log book of the "Santrina." Do you know what dates you were in Prince Rupert?

A. What date I was in Prince Rupert?

Q. Yes.

A. I arrived in Prince Rupert on August 30.

Q. And how long was the boat there?

A. Till September the third.

Q. What was the purpose of going to Prince Rupert at that time?

A. I was towing a barge load of lumber.

Q. You were towing a barge load of lumber?

A. I was towing a barge load of lumber, yes.

Q. Was it lumber of the Juneau Spruce Corporation? A. It was.

Q. Where was it supposed to be unloaded?

A. At Prince Rupert.

Q. While you were in Prince Rupert on this occasion—I will withdraw that. Do you know Mr. Vern Albright when you see him? A. I do.

Q. While you were in Prince Rupert did you see Mr. Albright? A. I did.

Q. Was anyone with him? A. Yes.

(Testimony of Luwig C. Baggen.)

Q. Who was with him? [752]

A. Joe Guy.

Q. And how many days were you there?

A. Well, I was there from August 30 until September 3.

Q. How many times did you see them there?

Mr. Andersen: By the way, your Honor, the same objection on behalf of the International.

The Court: Very well.

Q. Do you know how many times you saw them, Mr. Baggen?

A. I couldn't say. I would say I seen them three or four times at least.

Q. Was the barge unloaded at Prince Rupert?

A. No.

Q. Where did you go from there?

A. Tacoma.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No questions.

Mr. Banfield: That is all.

(Witness excused.)

Mr. Banfield: If the Court please, we would like to have about a five minute recess at this time —ten minute recess, if the Court please.

The Court: Very well. Is this your last witness?

Mr. Banfield: Yes, your Honor. We think it will be the last witness. We want to examine some exhibits marked for identification. [753]

Mr. Strayer: Before the recess, your Honor, is counsel going to produce the records of Local 16 or ascertain if he could produce any information yet?

Mr. Andersen: We are unable to find the matter to which you refer.

Mr. Strayer: May the record show that then. Mr. Andersen, will you make a statement for the record that you made a search and were unable to locate the records?

Mr. Andersen: Of the kind to which you refer.

Mr. Strayer: Of Local 16?

Mr. Andersen: Yes.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Strayer: If the Court please, that completes the plaintiff's case with the exception of certain exhibits we wish to offer in evidence. We offer in evidence Plaintiff's Exhibit 3 for identification, stipulated to be the Constitution of the International Longshoremen's & Warehousemen's Union.

The Court: It may be admitted.

Mr. Strayer: Also we wish to offer in evidence Plaintiff's Exhibit 4 for identification, which is stipulated as the Constitution and By Laws of Local 16, I.L.W.U. [754]

The Court: It may be admitted.

Clerk of Court: The first one has been marked

Plaintiff's Exhibit No. 3 and this one has been marked Plaintiff's Exhibit No. 4.

Mr. Strayer: We offer in evidence the instrument, the Plaintiff's Exhibit 5 for identification, which is a copy of a letter dated October 18, 1947, which has been referred to in the testimony.

Mr. Andersen: May I see that?

Mr. Strayer: I will state for the record, your Honor, that when Mr. Schmidt was on the stand and being cross-examined by counsel for the defendant, he was testifying about a letter which he wrote to Mr. Hawkins, and Mr. Andersen objected, that the letter was the best evidence, and this copy of the letter was produced. We offer it as the best evidence of that portion of the testimony.

The Court: It may be admitted.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 5.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial. I didn't make the best evidence objection, but also it is self-serving.

Mr. Strayer: I don't claim anything for the letter except it was referred to in the testimony of Mr. Schmidt. We offer Plaintiff's Exhibit 10 for identification which was [755] referred to by the witness Schmidt, and also by the witness Boles.

Mr. Andersen: The same objection, may it please the Court.

The Court: The same ruling.

Clerk of Court: The exhibit has been marked the Plaintiff's Exhibit No. 10.

Mr. Strayer: We offer in evidence Plaintiff's Exhibit 13 for identification. This sheet referred to by the witness Boles and also by the witness Prawitz.

Mr. Andersen: The same objection.

The Court: It may be admitted.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 13.

Mr. Strayer: We offer in evidence Plaintiff's Exhibit 15 for identification which is the statement of profit and loss testified to by the witness Boles.

Mr. Andersen: The same objection, your Honor.

The Court: Was all of that testified to by the witness?

Mr. Andersen: I believe it was, your Honor.

Mr. Banfield: The testimony was that these extra sheets were explanatory and details of the profit and loss statement.

The Court: Explanatory of the witness's testimony? [756]

Mr. Banfield: And of the original profit and loss statement to which he testified, and supporting it.

The Court: In other words, it is just merely the breakdown of the figures to which he testified.

Mr. Banfield: That is right.

The Court: It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 15.)

Mr. Strayer: We offer from the original plead-

ing file the Special Appearance by Motion to Quash Service of Summons by the International Longshoremen's and Warehousemen's Union together with the Affidavit of Vern Albright attached and made a part thereof.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial in this proceeding.

The Court: Whose affidavit?

Mr. Strayer: Vern Albright, for the purpose of showing the interest of the International.

Mr. Andersen: The same objection—incompetent, irrelevant and immaterial.

The Court: The objection is overruled. It may be received.

Mr. Strayer: May we separate that from the original pleading file? I believe you have the original pleading file.

Mr. Andersen: With respect to the last exhibit, [757] counsel states that he offers it in evidence. There can be no qualification. If it goes into evidence it is not for any limited purpose.

The Court: If he offered it generally for introduction into evidence that seems to strip it of any conditions or qualifications.

Mr. Andersen: Why don't you have a copy of it made?

Mr. Strayer: I think that would be much more satisfactory, if it is satisfactory with the Court.

Mr. Andersen: I will stipulate a copy may be used without giving up my objection.

Mr. Strayer: What number will that be?

Clerk of Court: Number 19.

Mr. Banfield: If the Court please, I think we have one right here.

Mr. Andersen: Are you offering this also?

Mr. Strayer: Yes. That is the document.

Mr. Andersen: We make the same objection, plus that it is hearsay, that it is incompetent, irrelevant and immaterial and hearsay.

The Court: Will you let me see it? I want to see what the hearsay consists of. It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 19.)

Mr. Strayer: Now, if the Court please, the Plaintiff [758] offers in evidence a certified copy, an authenticated copy by the National Labor Relations Board, in the matter of the International Longshoremen's and Warehousemen's Union, Local No. 16, C.I.O., and the Juneau Spruce Corporation, of the Decision and Determination of Dispute in March, 1949.

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and hearsay.

Mr. Strayer: I may say this document is offered solely for the purpose of showing a lack of certification of Local 16 which appears as part of our case.

The Court: It may be received for that purpose.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 20.

Mr. Strayer: We rest, your Honor.

Mr. Andersen: I should like to suggest to the

Court—it is now quarter of four—adjourning to the morning, and probably we can more expeditiously present our case, and I will inform the Court we think our case will take not more than two days and I am allowing for cross-examination.

The Court: I want to conclude the case this week if possible.

Mr. Andersen: I, too. I think we can save time. I have a motion also.

The Court: Perhaps you should make the motion today.

Mr. Andersen: Yes, your Honor. [759]

(Whereupon the jury was excused until ten o'clock a.m. May 10, 1949, and retired from the courtroom.)

Mr. Strayer: I neglected to ask your Honor, I am not familiar with the practice here, I understand the reading of various exhibits may be reserved until the time of argument?

The Court: I doubt whether, under our practice, it can be read at the time of argument, if it is not read while the witness is on the stand.

Mr. Strayer: The witness was not on the stand when the Constitution was introduced.

The Court: Under a stipulation the rule wouldn't apply.

Mr. Strayer: And the same thing would apply on the Board's decision.

Mr. Andersen: The motion I intend to make at this time, particularly on behalf of the International,

may it please the Court, is for an advised or whatever term is used here, advised or a directed verdict, may it please the Court. The point is simply stated and clearly set forth in Plaintiff's Exhibit 19 there, namely that, as I understand the Taft-Hartley Act, it simply in so far as agency is concerned—and I assume the Court sees the point I am making—it is a common law rule in essence of course, is that if I go down to buy an automobile as I said the other day for Judge Folta [760] before they can hold Judge Folta for it they must have more than my word. There must be something on behalf of Judge Folta before Judge Folta can be forced to pay for that automobile. Here there is not a single piece of evidence at this time, so far as the International is concerned, saving and excepting evidence of alleged agents, as to the extent of anybody's authority to bind the International or showing that anybody would have authority to bind the International in relation to anything that occurred. As a matter of fact the evidence is crystal clear that until long after the dispute arose the International wasn't even here. I direct your Honor's attention to the pleading, April 10 as the effective day. The undisputed evidence is that Vern Albright wasn't here until May 8, roughly six weeks after. So far as Mr. Bulcke is concerned, he was here only on one occasion, and there was no labor dispute of any kind, simply a little grievance that apparently was lost in the wash, so to speak. Then counsel have introduced in evidence Exhibit 19.

They have introduced it in evidence. I assume there is the same common law rule here as over all the country. When they offer it they vouch for it. There is no dispute about that principle, so in Exhibit 19 these gentlemen say that Mr. Albright had no authority of any kind to bind the International. That is what they say when they introduce this exhibit in evidence. They say Mr. Albright said he has no authority to bind the International in anything, that his sole [761] duties are to render aid—I am paraphrasing, your Honor will look through it—and advice to the Local, and has no authority to bind the International in any situation of this kind. That is the gist of what he said.

The Court: I think counsel is offering that for its admission.

Mr. Andersen: I made the statement, it was introduced in evidence by counsel. I don't know what admissions they could possibly refer to. The only thing he says is that he has no authority of any kind. That is what he says.

The Court: That is not the kind of admission for which they would offer it.

Mr. Andersen: I don't see how they could offer if for anything else. They must offer it for something. The only admissions in the document are that Mr. Albright had no authority to bind the International.

The Court: That would be an admission from your viewpoint, but not an admission from the

plaintiff's viewpoint and it couldn't be the admission they offered it for.

Mr. Andersen: Your Honor, when I made the statement your Honor said it was offered generally. I said yes. I directed to your Honor's attention it was offered generally and went in generally. I excepted to any limitation of the offer. The Court said "generally" and it went in generally, and that was the Court's ruling. I don't believe that makes [762] much difference for the purpose of this argument, whether it was generally or specially. It was offered by the plaintiff. We have got to take the words when it was offered by the other side and interpret the meanings, the meanings normally and naturally applied to the words. It says on the face of this document that he is not an officer or agent upon whom service of process could be made. That was on the Motion to Quash. It doesn't say he is, it says he isn't. They are certainly not offering this kind of exhibit for an affirmative reason.

The Affidavit itself, to which the subheading is attached, says: "Affiant further states with regard to the labor dispute currently existing between the Juneau Spruce Corporation and defendant Local Union 16 of I.L.W.U. as follows: 1. This is a dispute between the Company and Local Union 16. It is not a dispute between the Company and the I.L.W.U."

They can only use it for what it says. Secondly, "Affiant's activities in connection with this dispute in so far as they relate to I.L.W.U. have been

as follows: (a) Making general reports on the dispute to I.L.W.U. approximately semi-monthly; this is part of affiant's general duty to I.L.W.U." —I guess it means to keep it—"informed on the progress of all such matters in which his locals are interested. (b) Rendering to Local 16 his usual advisory services as requested from time to time by Local 16. Such advice has [763] "consisted principally of advice on questions of whether the action or contemplated action of Local 16 is or is not within the power of Local 16, and whether it is or is not advisable to take from time to time. (c) Affiant has made no request either on his own initiative or on behalf of Local 16 for any assistance, cooperation, approval, disapproval, permission or ratification of any kind of action taken by Local 16 in said labor dispute to I.L.W.U. or to any other locals of I.L.W.U. (d) There has been no assistance, cooperation, approval, disapproval, permission or ratification by I.L.W.U. of any of the action taken by Local 16."

To me, that means what it says, may it please the Court, and when it is introduced by the other side they vouch for its truthfulness. I think that is the general rule. They say that as the rule, and as a matter of fact, the International hasn't ratified, condoned, or anything with respect to this dispute. I don't see how it could be more clear than that, may it please the Court. There are other points I could raise, too. I am sure the Court has the evidence in mind.

To recapitulate, Mr. Bulcke talked to Mr.

Schmidt, I think he said back in 1947, several months before this started. Mr. Bulcke didn't enter into it except this afternoon, and that was stricken. The evidence is limited to statements of agents, whether they used Mr. Berry as agent or Mr. Albright as agent. They produced the statement that the [764] International has nothing to do with this think at all. That is the state of the evidence. Unfortunately I cannot, at this time, give your Honor any opinions of any Courts, any appellate Court at least, and I don't know—I know of one District Court case where they hold outright that no members of a Union may bind an International, or even a Local, no members may, because I know of one Union in this country, one Local of over twenty thousand members, so a member couldn't bind it. A Union isn't a partnership. A partnership is an organization doing business for profit. A Union is not defined as doing business for profit. They are simply associations. A recognized member of a trade union may not bind the Union. It must be somebody with authority. I cannot give your Honor authorities. There are none, so far as I know, but we do have the general common law rule, that is that a statement of an agent cannot bind the principal. I think that is a time-honored as well as time-worn rule, that is that a statement of an agent cannot bind a principal.

I move for an advised or directed verdict, whatever is the practice. Thank you.

The Court: Do you wish to make a statement?

Mr. Strayer: The only thing I can conclude is that the practice is different in common law in California than in the Northwest. There is abundant support for the implication in your Honor's statement; an interested party in an action, [765] if they introduce that statement in evidence—if there was a letter written by the I.L.W.U. in which they specifically said Albright had no authority, but in the same letter told him to come up and see that the pickets remained on—we could take the part that is to our advantage and disregard the part that is to our disadvantage.

The Court: If you specify the parts you offer it for, the point made by the defense, that hasn't been done. As I recall, you offered it for the admission.

Mr. Strayer: I offered it for the admission against, not by the International, and that was the reason why I offered both the Affidavit of Vern Albright and the document, two which it was attached, made by a party to this action. I don't think—even if it was limited to a single document the manner of offering it generally in evidence was for the purpose of availing ourselves of any admissions in it. I did definitely state at the time I made the offer that that was the purpose.

The Court: It is true an offer may be made coincidentally in that manner, but when it is qualified, your opponent can introduce the rest. If counsel for defendant has been mislead here, that you offered it without qualification, then he was deprived of offering the rest of it for his own pur-

poses, and I don't know whether he wishes to do that or not, but if you wish to qualify your offer—if it hasn't already [766] been done, I thought it had been, but if it has not—you can qualify your offer to include only admissions, then the defense must be given the opportunity of offering the remainder of it.

Mr. Strayer: I thought the record so showed. I offered it solely for the purpose of showing admissions of interest against the International Longshoremen's and Warehousemen's Union.

Mr. Andersen: Again referring to this document, so I can refreshen myself, counsel did say he offered it as an admission against interest. I objected—this is a four or five page document—to it, and the Court said it was being introduced generally in evidence.

The Court: What I meant by that was that no specific part was pointed out or specified except by the term "admissions."

Mr. Andersen: This is an inseparable document, a narrative. He couldn't take out a clause, sentence or paragraph. The whole document must be read together. I don't believe he would wish to do that.

The Court: For the purpose of an offer he could offer a sentence.

Mr. Andersen: Of course, but with this particular document, if your Honor read it I am sure you would agree with me, it wouldn't be done that way. He offered the whole document [767] as an admission against interest. He offered the whole docu-

ment, so the whole document is in evidence. There is no question about that. Counsel simply can't offer a document and by ipse dixit the document is or isn't. The document speaks for itself, not counsel's ipse dixit, so the alleged language of this is what I read to your Honor. This is offered as an admission against interest. This language that "I have no authority."

The Court: I don't construe it as an offer of the entire admission, but all those portions counsel wishes to take advantage of as an admission against interest and that only. I think I might as well avoid further argument on this point, because to remove any misunderstanding I have allowed counsel to modify his offer, and you have now—or at least when the jury is here again—the right to offer the rest of it.

Mr. Andersen: That puts us in a difficult position on this argument, may it please the Court, unless the Court wants—the whole document was offered in evidence and I think if your Honor were to change that rule it would be an error and I would except to it. The whole document is in evidence.

The Court: I think it is unnecessary to argue that in view of my allowing counsel to qualify his offer to remove any uncertainty on that point, by qualifying his offer.

Mr. Andersen: The whole document is before you and [768] before the jury. I told counsel he didn't have to worry about reading it when the

witness was on the stand, with respect to the newspaper. But the whole document is in evidence, the whole document being in evidence I on this motion have a right to use it for whatever service——

The Court: Everything but the admissions from the plaintiff's standpoint. Anything else that is in your favor is for you, if you believe it is in your favor.

Mr. Andersen: That is——

The Court: Those portions under the ruling of the Court no longer bind the plaintiff. It is received in evidence for its admission. You can consider whatever parts are in favor of the defense, but they are not chargeable with those under the qualified offer made a while ago.

Mr. Andersen: Maybe we don't understand this. As I understand, counsel has offered the whole document.

The Court: For its admission.

Mr. Andersen: So the whole document is in evidence. Being in evidence, I can use it for any purpose that I wish.

The Court: Certainly.

Mr. Andersen: And so I use it in support of our position that the International, it shows the International has nothing to do with this lawsuit. I use it for that purpose.

The Court: You can use it for that purpose.

Mr. Andersen: It says here, as I read a few minutes [769] ago, to paraphrase it, it said "The International never had anything to do with it,"

Albright speaking, "I don't have authority in so far as the International is concerned to bind it in any matter of this kind and it never ratified, condoned or approved anything that went on here." That is in the Affidavit.

The Court: I understand, but all it presents is a conflict in the evidence.

Mr. Andersen: No, I don't believe it presents a conflict, because again on the other facet of this, the only evidence we have is a statement of an agent. I don't care who they refer to, it is still just an agent. Albright is characterized in that document——

The Court: Is it sufficient if he is an agent?

Mr. Andersen: If they proved he was an agent and acted within his authority.

The Court: You said he was still an agent. I wondered if you contended that was insufficient.

Mr. Andersen: Your Honor, the only testimony we have in the case is that certain people testified Mr. Albright was the International Representative. Some of them have testified that, about three people testified that. Mr. Albright testified that he was an International Representative of the defendant I.L.W.U. I believe a couple other people testified in substantially the same manner, but all of them simply characterized [770] him as an agent. Of course, the rule of law is that when a person says he is an agent of anybody else, that doesn't bind the principal unless it is first shown that the agent actually was empowered or authorized by the

principal, or unless within certain areas there is a type of ratification. Those are the only instances in which a principal may be held, as I understand the law of agency, so here we don't find any authorization nor do we find any ratification. We find just to the contrary. It is easier for me to buy an automobile for John Jones and say "I am his agent. Charge it to him." That is the sum and substance. Albright said he is a Representative of the International Longshoremen's and Warehousemen's Union. That is the sum and substance of the evidence, but there is no evidence tending to show as far as the principal is concerned, that there was any authorization or ratification. It completely negatives the idea. I think I have expressed myself on the point as much as need be.

Mr. Strayer: The only thing I can add is that I think counsel is trying to say that we could prove an agency or the scope of agency in a declaration out of court. We don't have that situation here. Albright was present in court and testified he is an International Representative for the Union; on his authority, no extra judicial authority, his Affidavit has been filed by the Union and he said he had certain powers and we rely on those admissions. [771]

Mr. Andersen: That to which he refers, I assume, is the Motion here which is signed by Mr. Paul, by counsel, and it says that the said Vern Albright was not at the said time of purported service of summons an officer or agent upon whom

service of summons may be made, and so on and so forth. That is signed by counsel on a legal paper. I objected to its materiality because in these matters we don't bind our clients by a notice, but the Court admitted it in evidence.

To reply to Mr. Strayer, I don't know that because an agent admits it in court it adds any greater dignity, that he is an agent. It is of equal force out of court. It isn't a question of extra judicial authority. It has no more force outside of court than in court on that one aspect.

The Court: I forgot to ask counsel for the Local if they wished to be heard.

Mr. Roden: Mr. Andersen, may it please the Court, has stated his point very clearly. The agent cannot declare himself the agent and, where there is nothing to show that any action has been taken whatsoever by the International except so far as the statement of the pretended agent, so to speak, and it is taken for granted he is the agent, it is only his naked statement which is before the Court. He said "I am the agent." There has not been one scintilla of evidence showing that the International recognized him or acknowledged him as an agent, and under such evidence as introduced that he is an [772] International officer here and testified whether or not in fact he is such an agent, his own declaration is certainly not sufficient. I think that is the gist of it.

The Court: I think there is sufficient evidence on that point to go to the jury. Motion denied.

Mr. Andersen: I have one other point I would like to raise for preservation of the record. Your Honor will recall that when this dispute arose there was the I.W.A. which said, "It is all right with us, Mr. Hawkins of the Juneau Spruce Corporation, to let the I.L.W.U. do the work." That was the basis. There is a broad public policy in view of the fact the Taft-Hartley Act allegedly was passed for the purpose of avoiding jurisdictional disputes. The action of the Company here in refusing to turn it over to them vitiates the purpose of the act. It is undisputed at this point that up until July 6 the Company could have operated at full force simply by allowing the I.W.A. to relinquish under the contract. Testimony is in evidence by half a dozen witnesses, and the evidence is clear up to this point that the Company was simply standing on a contract by which they were not bound, may it please the Court, in so far as this aspect is concerned.

The Court: You mean the Local, after indicating willingness to relinquish?

Mr. Andersen: Yes. The I.W.A. told Company "We don't want trouble. We figure this work"—I am quoting [773] verbatim—"We figure this work belongs to the longshoremen. Let them have it. We don't want it." They wrote a letter, I believe April 8, a few days before the strike, telling the Company, "It is all right with us for you to give this work to the longshoremen." That is undisputed in the evidence. We take a broad pub-

lic policy that if the Taft-Hartley Act was passed to avoid or prevent jurisdictional disputes in industrial relations, then when a Company for no reason—and the Court will have to agree with me there was no reason in this case for the Company to refuse to hire I.L.W.U. men—and the Court must agree, there is no other evidence in the record. Let me show your Honor a figure here. I don't have to write them down. The payroll was $100,000 a month, that is the undisputed testimony. If the longshoremen did all this work they would have been paid between five and ten thousand dollars a year. Let's take the highest, $10,000 a year, but somebody has to do that work and somebody has to get paid for it, whether the man is a longshoreman or not is immaterial. Wages have to be paid. The testimony was that there was a slight difference in pay between the longshoremen and the mill workers. Let's assume it's twenty per cent, $10,000 worth of wages, gets it down to less than $1,000, less than one-tenth of one per cent of the money spent would have been for longshoremen's wages. What was involved was less than one-tenth of one per cent of the monthly payroll, may it please the Court—less than one-tenth of one per cent. Now we have the rule of de minimus which applies to things like this. That couldn't justify an employer in saying, "We won't hire them. We won't open the plant for a year and we will suffer a million dollars' loss over one per cent in the payroll." What was the Taft-Hartley Act

passed for? Was it so an employer could say to this Union, "There is no dispute among yourselves who shall do this work, no dispute at all. The amount of money involved is completely negligible, but nevertheless we are not going to do business with the longshoremen. You are going to have to do the work." That is their position. I call attention to the public policy in back of the Taft-Hartley Act. That is factual and not denied one iota by the testimony. What is public policy? What is good for the public at large, for the common weal. This Company, because it wouldn't spend to what amounts to less than $1,000, about $500 in wages, wouldn't spend $500 a year on $1,000 a month payroll, comes into court and says, "We had assigned the work to the I.W.A."

That is the only way they have even a toe in the door of this case, may it please the Court, so this Court has the matter of public policy. To permit an employer in that situation to rely on a lawsuit to make his mill pay profits, that is not my idea of public policy. I think this Company, according to the facts as we have them now, arbitrarily and arrogantly [775] asked for and got a labor dispute. This is the most unreasonable employer I ever heard of. When two Unions say, "We don't care who does the work. It is all right with us," it comes under the de minimus non curat lex doctrine for an employer to say, "We are not going to do business with the longshoremen." Even though he might say he would be deprived of his day in

court, it is a matter of public policy. I renew the motion.

The Court: You mean the provision of the law here, if construed in the light of what you say the public policy is, would make this not an unfair labor practice?

Mr. Andersen: I am not too familiar with the unfair labor practice, may it please the Court. That isn't what I say. I am only talking about the policy aspect of the law, the preamble to the Act and in the Act itself, states the public policy. I understand here that one unfair labor charge was filed and dismissed on account of this situation. I think the unfair labor charge—correct me if I am wrong—it was a result of a decision which came in only instituted sometime later, sometime in August. I am talking about the instance of this matter when it first started, may it please the Court. I understand that there were two filed, one before and one subsequent. The first one, I understand, was dismissed. I understand that the Board investigated it and dismissed it. That is along the line I am talking about, may it please the Court. [776]

It is not the policy of the Board, and couldn't be the policy of the Board, and couldn't be the policy of the Act, to prevent two Unions from adjusting work claims among themselves. It would be ridiculous. Here is an employer who can't be hurt and two Unions who say, "Look, rather than have a strike, the longshoremen have always done this work. We figure it belongs to them. Let them

do it." And nobody can complain about it, and most assuredly a Court—I am convinced if the public policy means anything and is applied, this is that type of case. The Court on the status of this ruling must agree with me, rather "hope," I don't like to say "must" to the Court. Those are the facts. The mill wanted to operate. The Woodworkers didn't want to do the Longshoremen's work. The Longshoremen wanted to. The two Unions agreed. For what reason did the Company say, "We want the Woodworkers to do it"? No reason. What is the expressed purpose of the Taft-Hartley Act? It is to foster good labor relations in the United States. That is the public policy of the Act. It simply boils down to the Company saying arrogantly, "We refuse to do business with the Longshormen. It is true the I.W.A. says, 'Let the Longshoremen do it,' but we are still not going to." Then they sue us for a million dollars. What is that but being arrogant and going contrary to the Act on the public policy aspect. It is a broad question.

The Court: Do you make this argument you just concluded [777] in support of this motion?

Mr. Andersen: Yes, your Honor.

The Court: As I said a moment ago, as I construe your argument you contend that the Taft-Hartley Act or those provisions involved in this suit should be construed in the light of that public policy?

Mr. Andersen: Yes, your Honor.

The Court: And that, so construed, the Court would have to hold that this was not an unfair labor practice? Is that correct?

Mr. Andersen: This Court doesn't necessarily proceed on an unfair labor practice, if I understand you.

The Court: Isn't that what you have got?

Mr. Andersen: Section 303 of the Act, which in effect says that they accuse us of creating a jurisdictional strike—that is what they accuse us of.

The Court: Under that clause it defines that as one of the unfair labor practices.

Mr. Andersen: I see what your Honor has in mind. As I understand the facts, they filed two charges of unfair labor practice. The first was dismissed after investigation. That was before July 6, when they returned to work.

The Court: I am not speaking of any charges before the National Labor Relations Board.

Mr. Andersen: I am talking about the same thing, your [778] Honor.

The Court: You mean the charges in the complaint?

Mr. Andersen: No. I understand that after April 10 and sometime before August they filed a charge against this Union.

The Court: With the National Labor Relations Board?

Mr. Andersen: With the National Labor Relations Board. I understand that was dismissed after investigation, and I understand the reason for it

was because the I.W.A. and the I.L.W.U. were in agreement, and that is the reason it was dismissed. That is why I say the public policy is so clear here. The investigation was made and the charge dismissed. They in effect held there was no unfair labor practice thereby. After July 6, when they returned to work, after that time, the present charge before the National Labor Relations Board was signed, substantially the same thing—the same accusations. It went to hearing, the factual hearing. We are not before the National Labor Relations Board. We are before a Court, and are determining broad questions of public policy. Answering your Honor's questions specifically so far as the first case in effect the National Labor Relations Board held it was against public policy. There was no charge to go to hearing. I ask your Honor to do the same thing.

The Court: What about the second charge? There was a second charge, and you call attention to one. Shouldn't you call attention to the disposition of the other? [779]

Mr. Andersen: The second was filed and went to hearing, and that is what plaintiff bases its case on. I don't want to split this in two parts. I could say to your Honor from April 10 to July 19 their conduct—I couldn't split it in two parts as they did before the Board. I think I would be right if I said that their conduct has been so arrogant, so contrary to public policy, that their original acts vitiate—all of their conduct vitiates the

whole thing right up to the end of the thing, from April 10 until today, not only from April 10 to July 19 when the Woodworkers went back to work. It was started by their own arrogant and intolerant attitude. On April 10 and 9 it was in their power as reasonable people to say, "O.K., I.W.A., you don't want the work; O.K., I.L.W.U., you do. You can have it." What have we a public policy for? They come in court and say that on April 10 they closed down—due to their own arrogance—and ask so much money for every day they were closed down, despite that they were unreasonable. Do they have a right to come into court? It is worse than a gambling debt.

The Court: How do you square your argument with the later finding of the National Labor Relations Board?

Mr. Andersen: At best it only relates to July 19 on, may it please the Court.

The Court: Aren't the factual elements the same?

Mr. Andersen: No, your Honor; as I understand the [780] testimony, April 10 there was a picket line. It is still there, but on July 19—I may be a few days off—the Woodworkers decided to go back to work. Before that situation existed the I.W.A. told the Juneau Spruce to let the Longshoremen do the work.

The Court: You mean on April 10 there was a repudiation by the I.W.A.?

Mr. Andersen: By the I.W.A.; correct, your

Honor. From April 10 until July 19 nobody can gainsay the statement that Juneau Spruce Corporation was arrogant in its attitude and in defiance of the stated purpose of the Taft-Hartley Act. As I stated, the National Labor Relations Board refused to prosecute. It is true on or about July 19 the I.W.A. changed its position and that, for the first time, gave rise to the hearing before the National Labor Relations Board. We do have the two halves of this problem. What I say, may it please the Court, is there can be no question as a matter of public policy, that from April 10 to July 19 Juneau Spruce served arrogant defiance, defiance of the public policy and the Taft-Hartley Act, in their so-called claim against the I.L.W.U., and from the second period out, on the same basis that their original action was so arrogant, so in defiance of public policy, that they themselves prevented a settlement. It was not even a jurisdictional dispute, because there was no jurisdictional dispute. Their own arrogance of April 9, 1948, [781] deprived them of an opportunity to settle that strike, settle that dispute. As a matter of fact, as I say, there wasn't even a dispute. The two Unions were in harmonious agreement. Look at the evidence on April 1—a committee of Longshoremen called on the I.W.A. and waited on them. Before the meeting they talked about this, that and the other thing. The I.W.A. went in and among themselves discussed the whole thing for an hour and then passed that Resolution which is in evidence—"We figure

this work belongs to the Longshoremen." They passed that Resolution. Mr. Flint testified he wrote a letter to the Company saying, "Give the work to the Longshoremen." There were harmonious relations between the two. Who created a jurisdictional dispute? Who, on that basis, created trouble? It could only be the Company. I say the Company cannot unreasonably create and foment a labor dispute, which it did, and then come into this Court, or any Court, and ask for money damages, may it please the Court, and so their conduct goes all the way back to April 10, or rather before, say April 7, 8, 9. It was in their power to amicably settle the dispute at no expense to themselves. What is the Taft-Hartley Act for? Is it to permit a Company to say, "There are two Unions there, but I am only going to do business with one of them. I don't care what the other Union wants or agrees to between themselves, it is immaterial. If you won't do the work I will sue you, and if they insist I will sue them too." Under this, they [782] could have sued the I.W.A., too, with as much reason and logic. The Company here simply decided they were not going to be reasonable under the Taft-Hartley Act and settle this lawsuit. I don't see how else you can look at it. These facts are completely irrefutable.

As far as plaintiff is concerned, it adds up like I have said. All you have to do is read the Resolution and that letter. Mr. Hawkins wouldn't do business. He had a contract with I.W.A. He

wouldn't negotiate with the I.L.W.U., sure, all right. He said, "If we did, maybe the Electricians would want a contract, or maybe the plumbers would want a contract." That is no concern of his. If the electricians wanted to come to him and ask for a contract it is their right. If the carpenters want to come to him and ask for a contract it is their right under the Act, and that applies to every other craft. We have industries with fifteen unions represented in their operations.

The purpose of the Taft-Hartley Act is to insure peaceful labor relations so that industry will not be disturbed. Now, who caused this trouble? Was it the I.W.A. who told the Longshoremen they wanted the Longshoremen to do the work? Was it the Longshoremen who went and said they wanted to do the work over the rail? The Longshoremen went to them and said, "The I.W.A. said we can do the work from the rail out," and the I.W.A. said, "Let them do the work." Where is the dispute? There isn't any. That is what the Company said April 9 and that has been their conduct to the present time.

The Court: You contend the law does not cover the situation as it existed between April 10 and July 19?

Mr. Andersen: The National Labor Relations Board.

The Court: I thought you were opposed to any finding of the National Labor Relations Board in this case?

Mr. Andersen Your Honor, it was only introduced in evidence for——

The Court: You are apparently relying on one for your argument.

Mr. Andersen: Your Honor takes notice of the Taft-Hartley Act. I don't have to prove that, and your Honor doesn't have to be concerned with the National Labor Relations Board, save and except as pleaded in the complaint. In relation to the Taft-Hartley Act, this Court must pass upon the facts in relation to the common principles of law, and that includes the Taft-Hartley Act, whether the National Labor Relations Board proceedings come in or not. Your Honor has a question of law before you.

The Court: You contend the law does not cover the situation as it existed between those two dates?

Mr. Andersen: The first two?

The Court: Yes.

Mr. Andersen: And that was by the fact that the [784] first charge filed against the I.L.W.U. was dismissed. That is extra judicial. For the purpose of this case that is an immaterial matter. The fact that the National Labor Relations Board may have made a determination is immaterial to the suit for damages, save and except as to the limits required by the allegations of the complaint in relation to the Taft-Hartley Act. They have to plead something about the Taft-Hartley Act because the suit is based on the Taft-Hartley Act. The point I am making is that on the Taft-Hartley

Act, as well as on general legal common law principles, they have no right to recover here because it is their own wrong, it is their own fault. That is what I say, and that is the only reason I refer to the Taft-Hartley Act, Section 303, which says under such-and-such circumstances people can sue for money if there is a jurisdictional dispute, may it please the Court.

The Company said they had assigned the work. That is the basis of their action, that the Company had assigned the work. If your Honor will read the Act your Honor will see that when they talked about assigning of work what they had in mind was a jurisdictional dispute, and so they say that if one craft is doing a job and another craft say they want it and they picket, it becomes an unfair labor practice. The first craft has the job and presumably a contract and the second craft says, "We want the contract."

Now, your Honor will recall that during the period [785] of the Wagner Act, there were a great many jurisdictional disputes of that kind. Your Honor will recall statements in the press and of the Congressional hearings. One of the primary things they wanted to do was stop jurisdictional disputes and strikes where one Union wanted the work and would picket. It would close the whole plant. The Company here said, "We assigned the work to the I.W.A." They are saying it is a jurisdictional strike; putting it another way, the facts show there was no jurisdictional strike. There

just wasn't any jurisdictional strike because that means there can't be a jurisdictional strike unless two Unions are competing for a certain type of work, both claiming jurisdiction for it. Short of that, there can't be any strike.

Between the two Unions there was no argument. That is the evidence. I don't believe I have to cavil about that. So, the Company, with no jurisdictional strike, chose to close its plant rather than operate. All they had to do was say to the I.W.A. "If you don't want the work under the contract—it is your benefit, you can always waive the benefit—you want to assign it to the I.L.W.U., but don't complain in the future about it," they would say to the I.W.A. There is no jurisdictional dispute when two Unions are in agreement.

The Taft-Hartley Act was passed and for this litigation its relation to the jurisdictional strike is the—I think it is very clear, may it please the Court. If those are the [786] facts, I say that no employer has the right under the Taft-Hartley Act to say when there was no jurisdictional dispute "Rather than hire Longshoremen I won't operate my plant" and that is in effect what they did, may it please the Court. "And if I can't operate the plant and I lose money under Section 303 of the Act I am going to sue you for damages." That is what the Company said. How are the facts susceptible of any other construction? Are we to follow along the lines of Mr. Hawkins? He said he had a contract with the I.W.A. for them to do

that work. Of course, he didn't have a contract at that time. I don't have to talk about it, it was assumed he had a contract. What sort of two million dollar corporation is this? They have a penny-ante payroll too small to compute. They have a contract with the I.W.A. for millwork and they stand on that contract. It could have been modified with the drop of a hat by saying, "Let the arrangement be that since the I.W.A. doesn't want the work, let the I.L.W.U. do it." Who was hurt? Instead of that the Company closes for a year, payrolls are locked, the Company claims they lost money, and now wants a million dollars from the Longshoremen for something they could have avoided by being reasonable.

It is embodied in the Taft-Hartley Act that they can't bring a labor dispute into full blossom and then come into court and say "We want a million dollars." To join the two halves together, in view of their original arrogance, it [787] prohibits and vitiates all their conduct. Does your Honor have any further questions?

The Court: No. Do you wish to answer that?

Mr. Banfield: Counsel has made a few misstatements. In the matter before the National Labor Relations Board there never was anything dismissed by the Board. This Company made a charge and filed it in the office. The original directors in Seattle who acted on behalf of the general counsel refused to allow the complaint. It was a refusal on the part of the general counsel's

office to issue a complaint. His reason for so doing, he said there weren't two Unions contesting, and his personal opinion, not having a decision of the Board, he felt that it was not a jurisdictional dispute. We told him all along it didn't have to be; it could be a dispute between Longshoremen and the Company, where the Longshoremen told the Company who they had to hire, so nevertheless the general counsel's office persisted in its position, but when the men went back to work we decided to amend the complaint, or that a complaint should be filed—not a complaint but a charge. It is like going to the District Attorney's office and asking to get out a complaint.

This is what the National Labor Relations Board said: "On the record before us, we are satisfied that the conduct that the charge alleges the respondents engaged in, comes within the purview of Section 8(b)(4)(D) of the Amended Act. [788] Accordingly, under the language of Section 10(k)(4) we are 'empowered and directed to hear and determine the dispute' out of which the action arose." That is what happened. The Board does not say one single word about our original charge. It didn't take any notice of it at all, because it had no authority to make the general counsel do anything, but I am convinced that if the general counsel had this opinion in his hand, when we first filed a charge—because he now knows where he stands. We have had counsel interpret public policy. That is the queerest I have ever heard of here in the

United States that in a productive unit, such as a sawmill, the two Unions have a right to set down and figure out the work and serve notice on the employer that that is what he has to do. So many out of this Union for this, and so many out of this one for this, and serve notice on the employer, and if he doesn't he is acting contrary to public policy and has no means of action.

In other words, this Court could not decide whom to hire as Bailiff if a Union decided on some other man. Permitting an employer to hire whom he pleases well prevents discrimination, because of Union affiliation, and it is only on a basis of ability, experience, and so forth. You can't use unionism to determine who you are going to hire, and discriminate because he does or does not belong to a union. An employer hires men. It makes no difference to him what Union [789] they belong to, and that is true in their hiring down there, but where over half of them are represented by one Union, you can make an agreement whereby a Union is the exclusive bargaining unit. Where they give that right, the Electricians' Union can't go down to the plant and say, "You have got to sign a contract with us." In this case counsel said the I.W.A. said, "Give them the work." Are we on the other side of the Iron Curtain? People tell us the ideal unit is sitting in circles and not consulting the employer. That mythical situation hasn't arisen even in Russia. In this country public policy—in the United States—is assigning work to

whomsoever he employs. Once in that work, he can't discriminate against them because they belong to a certain labor organization. The policy of the United States and in the policy we are under, Unions can't split the work and tell the employer whom to hire. You can still run your own business.

Mr. Andersen: As far as the general counsel of the National Labor Relations Board, I think procedurally and factually what he said is correct, but this fact remains: the first complaint where a charge was filed, after an investigation they refused to file a complaint, it wasn't until after the I.W.A. changed their position that the new complaint was filed. The new complaint and then the charge was filed. That was sometime in August, may it please the Court. With respect to the public policy of the law, permit me to read it to your Honor. I think we both know what public policy is.

"Section 1.(a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

"(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Let me go back and underscore, "that neither party has [791] any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest." So, this first charge was filed by this Company against the Union, an investigation was made and the general counsel, who has a great deal of authority under the Act, much more than a District Attorney—that is only an aside—he dismissed it. There is no question about it. It wasn't until after the I.W.A. changed its stand that the amended complaint was filed to bring in the changed situation where the I.W.A. then claimed to do the work. That was a jurisdictional dispute.

What is public policy? Did I misquote it? I told you what I thought public policy was, as expressed in the Taft-Hartley Act. That Act says

no steps shall be taken "inimical to the general welfare." Labor disputes should be settled peaceably and amicably. That is the public policy of the Act.

May I state it again, the Woodworkers said, "We figure the work belongs to the Longshoremen." There is no argument about that. The Longshoremen contend that they have been doing this work for years. We know loading of waterborne commerce from time immemorial was Longshoremen's work. Even by the Constitution of the Woodworkers—the committee goes to the mill, the employer says, "We are not going to let you adjust it among yourselves. We are going to tell Unions the when and where and why of hiring them." He talks about the [792] Electricians. Certainly they have a right to say, "We want to negotiate a contract with you. We want to carve a unit out of this plant." We don't have any law that says plants must be on an industrial basis. The Taft-Hartley Act encourages the small units and organizations and provides the means, like the United Auto Workers cut in a small place. The Act provides some place that a definable unit can be carved out. They express themselves and are united by themselves.

By what right do these gentlemen say Electricians don't have a right, that the right is given to Mr. Hawkins. He said, "I am not going to have the Electricians talk to us, or the Plumbers, or the Carpenters." By what authority does he arrogate

that? He says, "There is no jurisdictional dispute. We are going to sue for one million dollars."

What is the public policy under the Act, may it please the Court? It couldn't be clearer than that part of the Act which I read, common ordinary decency and common ordinary sense. There was no jurisdictional dispute. There just wasn't any. There was no dispute, may it please the Court. Where is the dispute? How can we imagine a dispute there?

The Court: Wasn't there a dispute before the relinquishment?

Mr. Andersen: No. [793]

The Court: Two Unions claiming the right to that work?

Mr. Andersen: Are you talking about April 10?

The Court: No; I am talking about before April 10.

Mr. Andersen: The situation before April 10 —there was no dispute. There were two Unions, particularly the I.L.W.U., which thought the work should be theirs. What did they do? They acted in accordance with the Taft-Hartley Act, within the spirit and the public policy of the Taft-Hartley Act. They went to the Company and said, "We would like to do this work."

The Court: Why didn't they go to the Company between April 1 and the time of the contract, in November?

Mr. Andersen: They did, your Honor. They first went early in September or October. That is the testimony.

The Court: Wouldn't you say at that time there was a jurisdictional dispute?

Mr. Andersen: No. There was no dispute.

The Court: Both were claiming the right to the same work.

Mr. Andersen: So far as the Taft-Hartley Act is concerned, the dispute is a closely defined thing. It has to be right up to the point of a strike. That is a jurisdictional dispute. There must be cessation of work. Short of that, negotiation or conciliation; no cessation of work. The Taft-Hartley [794] Act was designed to prevent cessation of work. It wants disputes settled. Before April 10 the Longshoremen went to the Company and said they wanted the work. They didn't get a favorable response from the Company, so they went to the Union. They didn't want trouble. They said we have always done it. Even the pre-existing contract is in evidence. They said, "We have always done the work." And the Union—the I.W.A.—agreed with them.

There can be no dispute, may it please the Court, when there is an agreement. There can be no jurisdictional dispute when there is an agreement between the Unions involved. They are mutually exclusive terms, may it please the Court.

The Court: When you spoke of public policy and peaceful relations, it could also be argued it doesn't mean Unions after a contract has been executed, a contract for a bargaining agent. You could be arguing—you are certainly not recogniz-

ing—that you could pick out a subsequent and not an initial dispute, as not being in conformity with the labor policy of the Act. It seems to me your argument cuts both ways.

Mr. Andersen: I don't follow your Honor there, frankly.

The Court: Perhaps it isn't important.

Mr. Andersen: The Taft-Hartley Act is not concerned [705] with what we would call an immediate dispute, that would immediately flare up. The facts here show that in October when they had their first meeting and the Company said they had a contract with the I.W.A., that wasn't correct, that wasn't true. They told them that they already had a contract, when as a matter of fact there was no contract, and that is the evidence by Mr. Schmidt and also by Mr. Flint. They didn't have one until November 3. The Union went to the Company before they had a contract and said they wanted to negotiate a contract. The Company didn't tell the truth. In the letter dated October 18 Mr. Schmidt says the I.W.A. Union turned the contract down. There was none until November 3. The Union went before there was a contract and said, "This work belongs to us. We claim it. We want to negotiate with you for it." That was the testimony of Mr. Schmidt, and he says in the letter, "I stalled them" off. Let me have that letter, please, I would like to read it to your Honor. The letter says "I stalled them" off. That is it. "We presented the Union Contract"—speaking about the I.W.A.—"and it has been turned down by the Un-

ion." He says, "Yesterday the C.I.O. Longshoremen's Union Representative came in and raised a rumpus about us loading the scow for transshipment either to Seattle or Prince Rupert"—this letter is written October 18, "claiming the right to load any cargo over the rail. I brought up the point this was material for our own people, being towed by [796] our own boat. They insisted that it makes no difference." So far they are within the realm of reasonable labor relations arguing back and forth. "I have stalled them until you get back, which at that time I thought would be this week." So, on October 18—your Honor said why didn't they go there before they had a contract—that is irrefutable evidence that the Company had no contract on October 18. That shows there, Mr. Schmidt says "I stalled them" along until next week or so. Your Honor said good labor relations—they went to the Company and said we want to do this work. The Company was stalling them along.

You will recall the other evidence. After the twenty-ninth meeting, they went there before the contract was signed. It wasn't signed until November 3. That is the situation. They did everything reasonably required of them under the Taft-Hartley Act. The employer had it in the palm of his hand to resume operations and, as I say, arrogantly refused to do it, absolutely and contrary to the public policy under the Act. I know of no rule of law which permits people to take advantage of their own wrongdoing.

The Court: Well, at this stage of the case I think the motion should be denied.

(Whereupon Court adjourned until ten o'clock a.m., May 10, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

The Court: You may proceed.

DEFENDANT'S CASE

MIKE SESTON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Roden:

Q. Mr. Seston, will you please state your full name? A. Mike Seston.

Q. And how long have you lived around the town of Juneau? A. About six years.

Q. What has been your occupation principally during that time? A. Miner.

Q. In 1948, the early part of the year, what occupation did you follow?

A. Sawmill worker.

Q. For which sawmill company did you work?

A. Spruce; Juneau Spruce Corporation.

Q. Juneau Spruce Corporation. Do you remember the time, April 1 of 1948? I will take that back. At that time were you a member of the I.W.A.? A. I was. [798]

Q. The International Woodworkers of America?

(Testimony of Mike Seston.)

A. Correct.

Q. How long had you been a member of that organization? A. Since 1944.

Q. And I take it that since 1944 you had been a member of the I.W.A. and had been employed at the Juneau——

A. Juneau Lumber Mill.

Q. At the Juneau Lumber Company's plant, up to the time that the Juneau Spruce Corporation took over, is that right? A. That is right?

Q. And you continued to work for the Juneau Spruce Corporation after that for some time?

A. I did.

Q. Now on the first day of April, 1948, do you remember a meeting being held on that day in which some members of the Longshoremen's Union appeared? Do you remember that meeting?

A. Yes; I remember. That was my first day coming back to work.

Q. Can you tell the Court and jury where that meeting was held?

A. The meeting was held at eight o'clock in the Miners' Hall.

Q. And who called the meeting?

A. Gus Lee, Vice president of the Union.

Q. Gus Lee, the Vice President of the I.W.A.?

A. I.W.A.

Q. And that meeting was actually held, was it?

A. Yes.

Q. Now, before that meeting was held by the

(Testimony of Mike Seston.)

I.W.A., did any members of the Longshoremen's Union appear at your Hall?

A. When the meeting was called to order there was nothing but members present, around fourteen or fifteen members were present.

Q. At the actual meeting, but before the meeting opened was there anybody present who represented the Longshoremen?

A. When it opened there wasn't any longshoremen present in the place.

Q I didn't get that.

A. I said nobody was present except the members of the I.W.A.

Q. But before their meeting took place, was there anybody present except I.W.A. members?

A. Fourteen members.

Q. Fourteen members of the I.W.A., is that right? A. That is right.

Q. Was anybody present there of the longshoremen before your meeting opened?

A. I never noticed anyone.

Q. At that time was there any talk about the loading of barges, at that meeting?

A. When the meeting was established, come to order, they [800] called the longshoremen, being they was downstairs and told them to come up and present their view.

Q. The representatives of the Longshoremen were downstairs in your Hall?

A. That is right.

(Testimony of Mike Seston.)

Q. And this Hall is a two-story affair?

A. Two-story building.

Q. And you people, that is the I.W.A., met upstairs and some of the Longshoremen were waiting to be called and were downstairs?

A. That is right.

Q. Do you remember who presided? Who was the Chairman?

A. The Chairman was Gus Lee, the Vice President.

Q. Do you know who the Secretary was that night?

A. The Financial Secretary was Gordon Peterson, and I couldn't remember the Recording Secretary.

Q. Was Gus Gustafson the Recording Secretary?

A. I couldn't positively state what is his name.

Q. After your meeting had been called to order, word was sent down to the Longshoremen waiting downstairs to come and appear before the meeting, is that right? A. That is right.

Q. Please tell the Court and jury what happened then.

A. They brought up the question the first thing, I think, George Ford, he was Chairman of the Committee—I think [801] there were four of the Committee present at the time—it was George Ford and I couldn't think of all those names—now—Joe Guy——

(Testimony of Mike Seston.)

Q. And a man named Wheat?

A. And an old man, Wheat, and a fellow by the name of Burgo, I couldn't pronounce his name.

Q. Those were the four members, as I understand you to say, who represented the Longshoremen. Is that right? A. That is right.

Q. State what was said, first of all by the Longshoremen and then by members of the I.W.A.

A. The President called attention of the members at the time that we wanted to hear from the Longshoremen. Gus Lee stated we wanted to hear their story, so the first man on the floor there stated they went down to the Spruce Corporation to see what they could do with the Company to load the barges, equipment in interstate commerce, as it belonged to them, and was a past practice and they had done all that work and that the Company—Mr. Hawkins—wouldn't listen to them, so they come up to the Union; that they wanted to get their sanction and to respect their picket line. They voted on putting a picket line and they was talking for quite a while, three members were talking. One was just sitting listening. I think we were supposed to have three members on the Committee. So we were just listening, the rest of the members. When they got through we assured them we would respect the picket line. [802] t

Q. Now, as I understand you to say, these representatives of the Longshoremen were talking about the loading of the barges?

(Testimony of Mike Seston.)

A. That is right.

Q. And that Mr. Hawkins, the Manager of the Juneau Spruce Corporation, would not listen to them or would not talk to them about it? Is that right? A. That is right.

Q. Then what happened?

A. Nothing happened excepting we called to their attention that we would respect the picket line.

Q. Let me put it this way: Those representatives left your meeting, did they?

A. We ordered them out because we got to hold a meeting.

Q. You ordered them out of the Hall?

A. They walked out and we continued with the conducting of the meeting.

Q. When you say "ordered them out" you don't mean that any difficulty had arisen?

A. No. We told them we were going on with the affairs of business.

Q. The meeting was a meeting of the I.W.A.?

A. I.W.A.

Q. What did the I.W.A. do about this situation, if anything?

A. The first thing, the Vice President, he refused to serve as Chairman of the meeting, then the members decided to call for nominations of an officer, of the Chairman or President, and nomination was called. I couldn't tell you who called the nomination. Mr. Flint, he was nominated as Chairman and President for 1948.

(Testimony of Mike Seston.)

Q. Did he take the chair then, that evening?

A. No. He was the main speaker on the subject of the trouble that was supposed to be between the Longshoremen's Union.

Q. He was the main speaker? That is, William Flint? A. Yes.

Q. Who later on became the President of the I.W.A.? A. That is right.

Q. What did you talk about?

A. Well, talked of the thing that involved the sawmill workers to understand where—they talked on the question whereby the sawmill workers would be injured if the Longshoremen put up the picket line, and the same time the question was going on pro and con on the subject and one of the members got up and stated the jurisdiction of the sawmill workers and what is our purpose and work and claimed that our work, according to the ritual of our Constitution of the I.W.A., was from the stump to the finished product. That [804] is as far as we are supposed to handle, that is the jurisdiction of the I.W.A. That is as far as we can go.

Q. That talk was made in connection with an article in your Constitution, is that right?

A. That is right.

Q. Somebody called that to the attention of the meeting; that is correct, isn't it? A. Yes.

Q. Then what was done?

A. Then everyone was expressing an opinion. Some expressed it to prove that the scows and dif-

(Testimony of Mike Seston.)

ferent equipment was used down below like that the lumber to Puget Sound was handled on the barges by the sawmill workers in low inland waters.

Q. Lumber on the barges was handled by members of the I.W.A., if a barge operated on inland water? A. Inland water.

Q. Was anything said about barges operating on the high seas?

A. Another got up and said they had done it in different places in inland water where the lumber workers loaded scows and when the scow went in deep water the handling of the barge was the Longshoremen's.

Q. I understand you to say then that in inland waters the I.W.A. members would load the barge and that barge would go and discharge lumber to a steamer or barge going to the [805] high seas, is that right? A. On the high seas.

Q. At that meeting was there any resolution passed such as contained in exhibit—I show you Defendant's Exhibit No. A. You look at this.

A. My eyesight is not very good.

Q. Let me read it to you.

A. You better read it.

Q. "Special Meeting, April 1, 1948, Discussion Between Labor Committee of I.L.W.U. and those attending meeting relative to loading of barges and ships. Motion made and seconded to go on record to not load barges. We figure this work belongs to the Longshoremen. By a written vote—thirteen members present."

(Testimony of Mike Sestan.)

Mr. Andersen: It says "Unanimous," I believe.

Q. Yes. "Thirteen members present—unanimous." Do you remember of anything like that being done that night?

A. Yes, we voted. Fourteen members was present. We had a standing vote. Thirteen was standing up and one was sitting down.

Q. After this meeting and you had taken the action as you have now indicated, did you tell the Longshoremen as to what had happened at your meeting?

A. A committee was appointed to tell the Longshoremen our action. [806]

Q. Do you know of your own knowledge whether or not that committee did inform the Longshoremen? A. Beg pardon?

Q. Do you know yourself whether or not the committee which you people appointed did inform the Longshoremen of your action?

A. I couldn't say.

Q. You couldn't say? All right. Now, then, as I understand you to say that this motion was adopted at the meeting at which fourteen members of the I.W.A. were present, and when the vote was called thirteen stood up voting in favor of it and one remained seated, is that right?

A. Correct.

Q. Now then, was there any meeting held about a week or so after this meeting?

(Testimony of Mike Seston.)

A. A meeting was called on the ninth of April.

Q. Who called that meeting, Mike?

A. It was called by Mr. Flint.

Q. And what was the purpose? Why was that meeting called?

A. The meeting was called on the purpose that a picket line would be established the next day.

Q. You people wanted to consider the situation?

A. Correct.

Q. That meeting was also held at the Union Hall? A. The Miners' Hall. [807]

Q. How many people were present at that meeting?

A. I would estimate around one hundred and eighty, one hundred and ninety.

Q. Were all these people who were present, were they members of the sawmill workers' Union?

A. They were.

Q. Some may not have been, but were working at the sawmill at the time?

A. If you want me to state in my own words——

Q. Yes, state it in your own words.

A. When the meeting was called to order and it was a large turnout they didn't know if they were all members or not. They were sworn in as members, into the organization at the time so they could take action on the floor. They were sworn in at the time.

Q. All sworn in as members of the I.W.A.?

A. That is right.

(Testimony of Mike Seston.)

Q. Then tell us what happened then? Who was the officer—the Chairman of the meeting?

A. Mr. Flint.

Q. That is William Flint? A. Yes.

Q. Who was Secretary, if you remember?

A. The Secretary was Gordon Peterson, Financial Secretary. They got a Recording Secretary but I can't think of his [808] name.

Q. Tell the Court and jury what happened at that meeting.

A. The question was on the floor pro and con—different ways—what was going to take place. Mr. Flint announced, or stated what had taken place himself.

Q. Can you tell us what Mr. Flint did say, as a matter of fact?

A. He said—in the first place they read the minutes of the previous meeting.

Q. And that was the meeting of April 1?

A. Of April 1.

Q. That is the minutes which I have read out to you, or did read out to you a moment ago?

A. Yes, that is the same minutes.

Q. Go ahead.

A. The minutes were read and he asked if there was any correction or omission in the minutes. Nobody responded or said anything. The minutes was approved as read. Then they called attention to the members to express their opinion regarding the picket line, what they were going to do about it.

(Testimony of Mike Seston.)

Q. What was that?

A. Different guys had expressed the opinion to respect it. A majority of them expressed it. According to the Constitution of the C.I.O. organization, that we should [809] respect the picket line. It went on for over half an hour, till they called—they put it in a motion to respect the picket line.

Q. At that meeting, I will read to you again from Defendant's Exhibit A, "Special Meeting, April 9, 1948, Discussion on Conditions Relative to I.L.W.U. loading barges. Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of I.L.W.U." Was that kind of resolution or motion adopted that night?

A. The first of April?

Q. I am now on the second meeting, when the question of the picket line——

A. Yes, we voted not to cross the picket line on the ninth.

Q. The ninth of April?

A. The ninth of April.

Q. That is what it says here "Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of I.L.W.U." That is what happened that night, is that right? A. Yes.

Q. And that is the meeting at which Mr. Flint presided himself? A. That is right.

Q. Do you know whether or not the action which

(Testimony of Mike Seston.)

was taken at this meeting of April 9 was communicated to Mr. Hawkins, [810] whether he was advised as to what the I.W.A. had done that night?

A. It was communicated the next morning. A majority of us went down to work like nothing happened, most of us. Nobody went across the picket line. That is all what happened.

Q. The picket line was there?

A. The picket line was there.

Q. And the I.W.A. members recognized it?

A. Recognized it. They never went through the picket line.

Mr. Roden: I think that is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Seston, on your meeting of April 1, Mr. Ford and Mr. Guy, Mr. Wheat and Mr. Burgo were there. As I understand your testimony they told you this work of loading the barges belonged to them, is that right? A. That is right.

Q. They told you they had always done that work before? A. Yes.

Q. Did they tell you they had a contract with the Company to do that work?

A. A verbal contract, or had a contract. We couldn't prove it ourselves if they had it or not.

Q. Did they tell you they had a contract with the Juneau Spruce Corporation or the old company, the Juneau Lumber Mill?

(Testimony of Mike Seston.)

A. They stated they had a contract with the Juneau Lumber Mill.

Q. And did they say that that contract carried over to the new Company?

A. They did. That is what they stated, that when the Company took it over that labor condition went with it.

Q. They told you then that the new Company, Juneau Spruce Corporation, was bound by that contract they had with the old Company?

A. That is right.

Q. And did they tell you they did this kind of work all up and down the Pacific Coast?

A. The inland water; quite a few places down around Columbia River, Puget Sound and different places—inland water work was done by the sawmill workers.

Q. This is what Mr. Ford told you now?

A. Mr. Ford—I couldn't state if it was Mr. Ford or Mr. Joe Guy, whoever was on the floor they gave their view.

Q. They told you some of this work was done by sawmill workers on inland waters?

A. Yes.

Q. But claimed none was done by sawmill workers on ocean-going barges? [812]

A. They stated that.

Q. Did they tell you they had been certified by the National Labor Relations Board?

A. They stated at that meeting any controversy

(Testimony of Mike Sestan.)

between Mr. Hawkins and the Longshoremen; they showed to the members of I.W.A. what took place and they asked for support at that time.

Q. They asked for support of their demands at that time? A. Yes.

Q. Did they tell you the I.W.A. Constitution didn't permit you to load barges?

A. They didn't say that; they were not in a position to tell us what the Constitution of the I.W.A. is.

Q. Didn't they get out your I.W.A. Constitution and tell you that your work was only from the stump to the finished product?

A. That was brought out by a member of the I.W.A.

Q. Mr. Ford didn't say anything about that?

A. Not to my knowledge. Mr. Ford had nothing to say regarding it.

Q. Which one was it brought it out?

A. One of the members attending the meeting.

Q. Do you know which member it was?

A. I believe it was Mr. Turner?

Q. Mr. Turner? [813] A. Turner.

Q. Turner. He was a member of the I.W.A.?

A. He was.

Q. And did you have a discussion of the correspondence that you had had with your International I.W.A. about this jurisdiction?

A. We had—that was we communicated with the International Union in Portland, Oregon. When

(Testimony of Mike Seston.)

they brought the question up, what was taking place between the Longshoremen and the Juneau Spruce, that was—I couldn't recall exactly the time, but it was in 1947, in the fall, I believe, on the end of October or the first part of November. That is the first time it was ever brought up.

Q. Did you discuss that correspondence at this meeting on April 1?

A. Yes. It was brought up at the meeting there, what some member brought up, and it was read—correspondence from the International which stated by the International that they understand the situation at Juneau; that they will—that they would advise us to act according to previous practice.

Q. Were you told at this meeting on April 1, Mr. Seston, that this practice of loading lumber on barges was new practice that had never been done before?

A. It was brought up that it was new work which never had [814] been done before in Juneau.

Q. You knew that yourself, too, didn't you?

A. I knew it, that it was new practice.

Q. Was it mentioned at this April meeting that the International of I.W.A. had advised you that if this work was new practice of the Company then the mill crew should put the lumber on the barges?

A. The way I interpreted it, it was stated in answer to our communication that we go according to the last practice, what took place in practice for some time, for a year, is the way we stated

(Testimony of Mike Sestan.)

in the correspondence to the International, that Longshoremen would load the barges and boats in interstate commerce.

Q. Was this telegram read to you at your meeting on April 1? A. Telegram?

Q. Let me read a part of this telegram to you, Mr. Sestan, and see if it will refresh your memory. This is a telegram from Virgil Burtz, Acting Secretary-Treasurer of I.W.A. at Portland, Oregon, dated October 30, 1947, addressed to Mr. O'Day, who at that time I guess was your Secretary. He says with reference to loading barges "If this is a new practice of the Company then the mill crew should put the lumber from the sheds to shipside and the Longshoremen take it from there and load it with ship gear. The loading of barges, scows, etc., with Company [815] equipment is under our jurisdiction. This is the way it is handled on Pacific Coast. Although we have had minor disputes with Longshoremen over this matter we have always won out." Now, do you recall whether that telegram was read to you at this meeting of April 1?

A. I don't recall that the telegram was read at the time, but it was discussed by the members present.

Q. It was discussed by the members present?

A. Yes.

Q. Was that part of it discussed, about uniform practice of the sawmill workers to do the loading where Company-owned barges were concerned?

(Testimony of Mike Seston.)

A. Everything was discussed from beginning to the end, whatever may involve I.W.A.

Q. Now you said that Mr. Flint made a statement at the meeting. Mr. Seston, did you say that you thought the sawmill workers had better not go through the picket line, is that right?

A. That is right.

Q. You said there might be trouble if you did go through the picket line, is that right?

A. I might say that would be advisable according to the Constitution of the C.I.O., to respect the picket line.

Q. The Constitution of the I.W.A. or C.I.O.?

A. Of the C.I.O. and I.W.A. [816]

Q. Requires you to respect a picket line?

A. Yes.

Q. Was there any talk there about a possibility of violence if you did go through the picket line?

A. It was possible at any stage.

Q. Was that discussed?

A. Discussed it as a possibility that could take place.

Q. Was it discussed that if you did go through the picket line you would be blacklisted and wouldn't be able to get work elsewhere?

A. Yes. That part was discussed, too.

Q. Did those things have an influence in your decision not to go through the picket line?

A. We abided on our oath to respect the picket line.

(Testimony of Mike Seston.)

Q. Did these other matters have any effect on your mind in your decision to respect the picket line? A. Yes.

Q. Is this right, Mr. Seston, that really your decision to respect the picket line was that you wanted to avoid trouble?

A. I didn't get the word "right"—what?

Q. Is the reason you decided to respect the picket line that you wanted to avoid any trouble?

A. That is right.

Q. In other words, you were confronted with a situation here [817] where there was an argument between the Longshoremen and the Company?

A. And the Company.

Q. And you wanted to stay out of it if you could? A. Correct.

Q. And you felt if you crossed the picket line there would be trouble? A. Possibly.

Q. Did you make any attempt to find out from the Company whether the representations of the Longshoremen were true or false?

A. Made to me? I just listened as a member of the I.W.A.

Q. Did your I.W.A. Committee attempt to check the accuracy of those representations?

A. Just that they had contact with the Longshoremen and went down to Mr. Hawkins. That is the only report I heard in the Miners' Hall at the meeting.

Q. Wasn't it reported back to your Union that

(Testimony of Mike Seston.)

the Company had no contract with the Longshoremen.

A. They hadn't come back with any. They just stated what took place between the Committee. I think they went down around the sixth or seventh of April, the combined meeting of 1-16 Longshoremen and I.W.A. Committee.

Q. Wasn't it reported back to you that the Company denied it had any contract with the Longshoremen? [818]

A. That is what they stated at the time. Mr. Hawkins stated they never had any contract except verbal for work for sometime.

Q. You knew that under your contract with the Company, the I.W.A. contract, this new Company recognized the I.W.A. as the exclusive bargaining agent for all of its employees, didn't you?

A. That is right.

Mr. Strayer: That is all.

A. Not for all the work.

Mr. Strayer: Just a moment.

Q. Are you still a member of the I.W.A., Mr. Seston?

A. I am working at the Cold Storage plant. I had to get a withdrawal card.

Q. What kind of work are you doing now?

A. Cold storage.

Q. Are you doing longshore work for the Cold Storage?

A. No. I work for the Cold Storage Company.

(Testimony of Mike Seston.)

Q. Are you a member of the Longshore Union now?

A. I just deposited my withdrawal card from the sawmill workers' Union into the Warehousemen's Union.

Q. You are now a member of the Local I.L.W.U.?

A. Not yet, until they pass on it.

Q. You are a permit man at the present time?

A. Permanent worker. [819]

Q. No, I mean they gave you a permit for you to work down there?

A. A permit, until it goes through Union procedure.

Q. You have an application into the I.L.W.U. for membership in the Local?

A. That is right.

Q. You haven't worked for Juneau Spruce Corporation then since April 9, 1948?

A. April 9, 1948; correct.

Q. When you made the decision not to go through the picket line, your idea, was it not, was to give the Longshoremen a chance to try to get together with the Company?

A. I didn't have any idea, but to bind ourselves according to our Constitution to respect the picket line.

Mr. Strayer: I think that is all.

(Testimony of Mike Seston.)

Redirect Examination

By Mr. Roden:

Q. Now, Mike, you people—you members of the I.W.A., didn't go through the picket line because you adopted a resolution or motion on the first of April to the effect that "We figure" that this work of loading of the barges "belongs to the Longshoremen."

Mr. Strayer: Your Honor please, I think counsel is leading the witness. [820]

Mr. Roden: I am reading from the motion.

Q. Isn't that correct?

Mr. Strayer: I object.

The Court: Repeat the question.

Court Reporter: "Now, Mike, you people—you members of the I.W.A., didn't go through the picket line because you adopted a resolution or motion on the first of April to the effect that 'We figure' that this work of loading of the barges 'belongs to the Longshoremen.' "

The Court: The objection is sustained on the ground that it is leading.

Q. Now then, Mike, tell us why you recognized the picket line?

Mr. Strayer: I think the witness has already testified to that, your Honor.

Mr. Roden: Let him testify to it again.

The Court: If there is any uncertainty about his testimony he may testify about that.

(Testimony of Mike Sestan.)

Q. Have you answered? Have you told us, Mike, why you honored the picket line?

A. Because we voted in the Union to adopt a resolution that we will respect the picket line.

Q. And that was not just because you happened to be a Union man, but you had a good reason?

Mr. Strayer: I object to that as leading.

Q. What was the reason for not crossing the picket line, [821] because you said you had passed a resolution to that effect, didn't you; that was the first of April; isn't that correct?

A. The first of April.

Q. Why did you pass the resolution?

A. Because we discussed it according to the code of the sawmill organization to respect the picket line.

Q. Was that the reason?

A. That is the reason.

Mr. Roden: All right. That is all.

(Witness excused.)

GORDON S. PETERSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paul:

Q. Will you state your name, Mr. Peterson?

A. Gordon S. Peterson.

Q. What is your occupation at the present time?

(Testimony of Gordon S. Peterson.)

A. Fisherman.

Q. Have you ever been a member of the International Woodworkers of America, Local M-271?

A. Yes.

Q. Were you a member of that organization on April 1, 1949—1948, pardon me. [822]

A. Yes.

Q. Did you occupy any position in the Union?

A. I was Financial Secretary.

Q. Were you working at that time, did you have any employment? Were you working for the plaintiff, the Juneau Spruce Corporation?

A. On April 1, 1948?

Q. Yes, or about that time.

A. Yes, I worked for Juneau Spruce.

Q. Do you recall if there was a meeting of I.W.A. Local M-271 on April 1, 1948?

A. Yes, there was.

Q. Were you at that meeting? A. Yes.

Q. Now, I should like to have you tell us who was present just before the meeting began and during the meeting. First, who was present before the I.W.A. meeting began?

A. There was a committee there from the Longshore Local 16.

Q. Can you name them?

A. There was Joe Guy, Orville Wheat, and I believe it was George Ford.

Q. Anyone else of the Longshoremen?

A. That is all I can remember.

(Testimony of Gordon S. Peterson.)

Q. Now, let's make it clear as to whether the Longshoremen were there during the meeting of the I.W.A., or whether [823] they were there at some other time?

A. Well, they were there before the I.W.A. meeting. They left before we started our meeting.

Q. Whom, from I.W.A., was present while the Longshoremen were present?

A. Well, the membership—I wouldn't be able to tell you all the names. I believe Nels Lee was presiding as President and Gustafson was Recording Secretary, and I was Financial Secretary.

Q. About how many I.W.A. members were present while the Longshoremen were there?

A. If I remember correctly, fourteen.

Q. Do you know what the purpose of the meeting was?

A. Well, the Longshoremen were going to have a committee up there to discuss the jurisdiction of loading the barges, and they said that they were going to establish a picket line at the mill.

Q. Did the Longshoremen make any representations or did they say anything at that meeting, just before the meeting began, I mean? A. Yes.

Q. Tell us what they said.

A. Well, they discussed past practice of loading of barges and ships and so forth at the mill.

Q. You mean this mill here? [824] A. Yes.

Q. Did they name any particular employer, like Juneau Lumber Mill?

(Testimony of Gordon S. Peterson.)

A. I believe they named the Juneau Lumber Mills.

Q. What else did they say about past practices?

A. Well, they said according to past practice it was their work and they were entitled to it.

Q. What else? Was any other representations made by the Longshoremen?

A. Well, I don't believe so. I don't believe there was anything else mentioned.

Q. Did they claim to have a contract with the Juneau Spruce Corporation?

A. With Juneau Spruce Corporation?

Q. Yes. A. No, I don't believe so.

Q. Did they mention anything about working for Juneau Spruce Corporation?

A. Yes; they said they had loaded barges and that they could prove it by withholding statements.

Q. Now, I understand from your testimony that the Longshoremen then retired and I.W.A. formally opened its meeting. Is that correct?

A. That is correct.

Q. Was there any discussion among I.W.A. members after the [825] meeting formally opened with regard to the general situation? A. Yes.

Q. How long did the discussion last?

A. Oh, I wouldn't know exactly how long it lasted. There was quite a bit of discussion.

Q. As much as an hour, two hours, three hours? Make an approximation, fairly close.

A. I would say between three-quarters of an hour and an hour.

(Testimony of Gordon S. Peterson.)

Q. And what did you discuss at that meeting? In other words, repeat what was said, as nearly as you can.

A. Well, we discussed—the discussion was whether we should respect the Longshoremen's jurisdiction in loading barges or whether we shouldn't.

Q. Did you talk about what the Longshoremen had said before the meeting began?

A. Yes, that was entered in the discussion.

Q. Was there any talk about the I.W.A. Constitution? A. Yes.

Q. What was said about that?

A. Well, it was discussed, and the Longshoremen before the meeting had started, claimed that it was their work, and somebody got up and said our jurisdiction went from the tree stump to the finished product, and that that was all. [826]

Q. Was any specific reference made to the Constitution or was this just general talk?

A. I believe that was a specific reference to the Constitution. I believe that is the way it reads.

Q. Was there anything said at that meeting by anyone with reference to practices of barge loading or ship loading on the Pacific Coast, meaning Puget Sound or Columbia River?

A. Yes. There was somebody got up and mentioned or explained how it was done in Puget Sound, I believe.

Q. What did he explain?

A. As near as I can remember now, it was that

(Testimony of Gordon S. Peterson.)

the millworkers loaded these small barges on the rivers down there and that they were in turn towed down to the bay where the steamers—where they could get them to the steamers, and from there on the Longshoremen worked them.

Q. Do you know if there was a motion or resolution passed at that meeting of April 1?

A. Yes.

Q. If I showed you Plaintiff's Exhibit No.—or Defendant's Exhibit No. A for identification, well, it is in evidence, do you think you would be able to say whether this motion was or was not passed at that meeting, calling your attention to the upper part of the document?

A. Yes, I believe that is right. [827]

Q. Was it passed at that meeting of April 1?

A. That is right.

Q. Do you know—first, do you know who made the motion or seconded it?

A. I don't believe I would be able to remember that.

Q. Calling your attention to the motion, is there anything omitted from the motion?

A. Anything omitted from the motion?

Q. Which the meeting acted on. I am not talking about the discussion. Was there anything omitted from the motion as stated by the movant and voted on—you know how a motion is made, someone gets up and makes a motion and his words are supposed to be taken down by the Secretary?

(Testimony of Gordon S. Peterson.)

Mr. Banfield: I think the witness ought to be asked what the motion was, rather than what the Secretary took down.

Mr. Andersen: And, if that is the sense of it.

The Court: It is the duty of the Recording Secretary rather than the Financial Secretary to take down the motion made, and this witness testified he is the Financial Secretary.

Mr. Paul: The Recording Secretary is in Los Angeles and beyond this case.

The Court: I am calling attention to the fact that he probably is not the person who took it down, but if he remembers what it was——

Mr. Paul: That is the sense of my question.

Mr. Banfield: My objection is that he shouldn't ask the question in that manner. What it is—ask the witness what it is.

The Court: Will you repeat the question?

Court Reporter: "Which the meeting acted on. I am not talking about the discussion. Was there anything omitted from the motion as stated by the movant and voted on—you know how a motion is made, someone gets up and makes a motion and his words are supposed to be taken down by the Secretary?"

The Court: You may answer if anything was omitted or not, by yes or no.

Q. Was anything omitted by the person who made the motion when the Recording Secretary took it down, if you know?

(Testimony of Gordon S. Peterson.)

A. I would say no.

Q. Was there any communication ever made as to the action of April 1 to the Juneau Spruce Corporation? A. Will you repeat that?

Q. Was any communication made by I.W.A. to Juneau Spruce Corporation; in other words, did you, the I.W.A., notify the Company of its action?

A. There was a discussion on whether to notify them or not.

Q. We are through with the meeting of April 1. We want to know if Juneau Spruce Corporation was notified of the action taken?

A. Like I say, there was discussion as to whether or not to [829] notify the Company of our action at that meeting.

Q. Did you ever get together with the Company on the subject matter of the meeting of April 1, the motion?

A. I just don't remember whether we did or not.

Q. Calling your attention to the date April 7, 1948, was there—— A. Oh——

Q. Go ahead and answer, was there a committee meeting with the Company on that date?

A. Yes.

Q. And who was present?

A. There was a joint committee meeting of the Longshoremen and Local M-271.

Q. Name those who were present.

A. There was, for Local M-271, I was present and Gustafson was present, and for the Longshore-

(Testimony of Gordon S. Peterson.)

men it was Mr. Joe Guy and Orville Wheat, I believe, and for the Company Mr. Hawkins and Dick Stamm.

Q. This was April 7—about what time of the day?

A. As I recall, I think it was supposed to have been eight in the evening.

Q. Just tell us what went on at that meeting, the conversation as nearly as you can remember it.

A. Mr. Gustafson from our Local M-271, was the first one to get up and break into the meeting, and he stated the [830] reason for the meeting which was to get together with all three parties concerned and try to work out some kind of agreement by which there wouldn't be any work stoppage. That was the point of having that meeting with the management of the mill.

Q. State all the conversation that went on.

A. There were introductions went around, I guess to everyone, and Mr. Hawkins wanted to know what they wanted to talk about, and we introduced the Longshoremen as a joint committee with the Woodworkers, and I don't just remember what one of the Longshoremen asked Mr. Hawkins if he wouldn't be willing to set down to negotiate or something like that, and Mr. Hawkins said he didn't have anything to talk about and it got kind of heated around there and I guess I got up and told Mr. Hawkins that the only reason the Woodworkers were there was to try to avoid a work stoppage,

(Testimony of Gordon S. Peterson.)

and we knew he wanted the mill to run as much as we did. He come back and told me why I thought I wanted the mill to run. I told him it was my own personal opinion, because I didn't want to talk for the Union. He said "You have got a hell of an opinion." I think it was Orville Wheat for the Longshoremen asked Mr. Hawkins, then he said "Then you won't negotiate with us and won't talk this thing over?" Mr. Hawkins said he didn't have anything to talk about. [831]

Q. What happened? Have you related all the conversation that you remember now?

A. It got kind of hot between the Longshoremen and Mr. Hawkins and Mr. Gustafson and I just sitting there, because it was more or less they were talking, and Orville Wheat got disgusted I guess, and grabbed his hat and got up and said "There is nothing more to discuss about. We will have to put the picket line around the plant." Mr. Hawkins said "Go ahead and put it around there," he says, "Go ahead and put the picket line around the plant," he says, and he says "We have got all the answers" or something like that. That was about all there was to the meeting. That is the way it ended. We didn't come to any agreement.

Q. Everybody left? A. Yes.

Q. Calling attention to April 9, was there a meeting of Local M-271 on that evening?

A. Yes.

Q. Were you present? A. Yes.

(Testimony of Gordon S. Peterson.)

Q. Who else was present?

A. William Flint was present and Gustafson was again, I believe, Recording Secretary. I was the Financial Secretary, and between a hundred and eighty and two hundred [832] millmen were there that worked at the mill.

Q. Were they members of I.W.A. or part of them?

A. The majority were members of I.W.A. and I believe when the meeting started some of them there had been signed up but were not initiated, and I believe we held an initiation that night for the rest of those members. I wouldn't swear to it; anyway, they were all millmen and they all voted.

Q. Were there any Longshoremen present during the meeting that you know of? A. No.

Q. Would you have known if there were any Longshoremen present? A. Yes.

Q. Were there any Longshoremen present just before the meeting began? A. On April 9?

Q. Yes. A. I don't think so.

Q. What was the discussion about on the meeting of April 9?

A. It was practically the same meeting of April 1, only on April 1 thirteen members voted to respect the Longshoremen's jurisdiction and there was a lot of hub-bub and dissension down at the mill after that, so Nels Lee—they were going to have a meeting of non-Union members on the [833] Northland Dock or some place—Nels Lee finally called

(Testimony of Gordon S. Peterson.)

a meeting in the Union Hall, so everybody attended and the majority of the men, and the majority of the mill workers, could vote on it and there was——

Q. Was there a vote taken?

A. There was a vote taken; yes.

Q. Do you know what the motion was?

A. The motion was whether to respect the Longshoremen's picket line.

Q. If I showed you a copy of a motion, do you think you would be able to recognize it, calling your attention to the bottom part of Defendant's Exhibit A? A. I believe that is it.

Q. Do you think that was the motion passed at that meeting?

A. Yes, that is the motion.

Q. And do you know what the vote was at that meeting? A. Yes; it was unanimous.

Q. Mr. Peterson, going back now to the meeting of April 7, on the part of I.W.A., was there any statement made to Mr. Hawkins or Mr. Stamm as to any of these motions or the first motion, or anything else that I.W.A. had done?

A. In the April 7 meeting?

Q. Yes.

A. Well, I believe that it was said that after the meeting was over and so there wasn't any hopes for negotiations [834] with Mr. Hawkins, I think Gustafson or myself, I don't remember which, told him that we would have to respect the I.L.W.U. picket line, if it was thrown around the plant.

(Testimony of Gordon S. Peterson.)

Q. Was that the only statement given to Mr. Hawkins? I am asking if the Company was informed of a definite action having already been taken by I.W.A.

A. That was the information of the action of April 1, that we voted to respect their picket line.

Q. Did you tell Mr. Hawkins?

A. On the seventh?

Q. Yes.

A. Yes; he was told on the seventh.

Q. Can you repeat as nearly as possible the words spoken?

A. I can't remember exactly, but to the effect that the Woodworkers would have to respect the picket line if it was thrown around the plant. It hadn't been thrown around the plant yet.

Q. On the meeting of April 9, do you know what time was that held?

A. I believe it was held right after the day shift got off shift, so that the Company was going to give the night shift time to go to the meeting, so I believe it was held right after the day shift. It may have been seven o'clock, between five and seven it started. [835]

Q. The Company was going to give time off for the night shift so the night shift could attend the meeting? A. Yes.

Q. Do you know whether the Company ever gave time off?

Mr. Strayer: It is immaterial. There is no dis-

(Testimony of Gordon S. Peterson.)

pute that the night shift was delayed an hour so the meeting could be held.

The Court: If it is not disputed——

Mr. Andersen: The Company testified that the men took the time off, but they all made it up the next morning. The Company testified to that. I think this witness will testify slightly different than that. After the meeting April 7 decided to respect the jurisdiction of the Longshoremen in loading barges, then it was at that time the Company changed its mind and said, "You voted not to go to work, now make it up," or words to that effect.

Mr. Strayer: I don't see how that is material.

The Court: I don't either.

Mr. Paul: It goes to the credibility of Mr. Hawkins, affecting his credibility.

The Court: Objection overruled.

Q. Do you know whether the Company ever did give the night shift time off or whether they had to make it up later on?

A. They were supposed to—the Company agreed—— [836]

Mr. Strayer: I object. I have no objection to conversation, but not a conclusion of what somebody was supposed to do.

The Court: He should answer that yes or no.

A. The question again?

Mr. Paul: As I stated it, he can't answer yes or no.

The Court: Will you repeat the question?

Court Reporter: "Do you know whether the

(Testimony of Gordon S. Peterson.)

Company ever did give the night shift time off or whether they had to make it up later on?"

The Court: Why couldn't he answer that at least that he knows?

Q. Do you know? A. Yes, I know.

Q. What do you know?

A. They had to make it up the next morning.

Mr. Andersen: May I ask one question?

The Court: Yes.

Mr. Andersen: After your meeting April 1 where you voted to respect the jurisdiction of the Longshoremen, you had a meeting with Mr. Hawkins of the Juneau Lumber—Juneau Spruce Company on April 7; that is correct, is it?

A. Yes.

Mr. Andersen: At that meeting, did you advise Mr. Hawkins of the meeting, of the action that your Union had [837] taken?

Mr. Strayer: That has already been gone into.

The Court: He testified that they did.

Mr. Andersen: The question I was going to ask was if they advised him of the action of the meeting April 1; I didn't think it had been answered. Thank you, sir.

Mr. Paul: That is all.

Cross-Examination

By Mr. Banfield:

Q. Mr. Peterson, when did you first start work at the Juneau Spruce Corporation?

A. August 14, 1947.

(Testimony of Gordon S. Peterson.)

Q. You were there at the time the I.W.A. made a contract with the Juneau Spruce Corporation on November 3, 1947, weren't you?

A. Well,—just a minute. Did I say 1947? August 14, 1947?

Q. Yes.

The Court: Yes.

Q. The strike was in April, 1948; maybe that will orient you.

A. I was there August 14, 1947.

Q. You were there, working at the plant, at the time the I.W.A. made a contract with the Juneau Spruce Corporation to be the exclusive bargaining agency for the Corporation, were you not? [838]

A. That contract was made before I was there, wasn't it? You mean the agreement we work under today?

Q. It was signed November 3 of 1947. It had been negotiated—parts of it—from time to time before that, but it was signed on that date.

Mr. Paul: I object to this line of questioning.

Mr. Banfield: What I want to know is how long he was there.

The Court: Objection overruled.

Q. Did you work continuously from August 14, 1947, to October, 1948? A. Yes.

Q. You were there when the barge was loaded in October?

A. I am not too familiar with the barge loading. My job is at the head end of the mill.

Q. But you were employed there?

(Testimony of Gordon S. Peterson.)

A. I was employed there.

Q. You knew the barge was being loaded?

A. Yes; I knew there was a barge out there being loaded.

Mr. Paul: I think I will renew my objection. It is improper cross-examination. Counsel stated he was asking the question for the purpose of learning how long he worked there, and dragging in all the rest of this is not properly reflecting that, if that is what he wants to know. I think the question has been asked and answered. [839]

The Court: Didn't he testify on direct with reference to barge loading?

Mr. Paul: Yes; he said April 1 barge loading was discussed. The cross-examination is limited to the discussion referring to past practice of barge loading.

The Court: That would depend what he testified to as past practice. If he testified to anything with regard to past practice as to barge loading, the cross-examination wouldn't be limited to a discussion of the meeting, as far as barge loading is concerned. I don't remember the extent to which he testified with reference to the practice of barge loading. If mention of it merely came in incidentally at the meeting, why of course it would be improper cross-examination.

Mr. Banfield: If the Court please, I can state what the testimony was and what I am trying to get at. The testimony was that the Longshoremen stated they had done barge loading, and after that

(Testimony of Gordon S. Peterson.)

representation the I.W.A. took action. What I am trying to get at is why they took the action, why this witness took that action in spite of the fact that he knew that it had not been past practice.

Mr. Paul: I will withdraw the objection.

The Court: Proceed.

Q. You knew another barge was loaded after the one in October, didn't you? A. Yes. [840]

Q. And you knew there was one loaded early in April? A. Yes.

Q. And the Longshoremen represented that they had done all the barge loading at this plant, is that correct? A. Of that type; yes.

Q. You said they presented you with some withholding slips. Did they have withholding slips dated later than October 7, 1947?

A. They didn't present me with any withholding slips. They merely stated they could. I don't know when they gave it to them.

Q. Did they show you any contract with the Juneau Lumber Mill? A. No.

Q. Did they state that they could?

A. They said they had an agreement with the Juneau Lumber Mill.

Q. But they didn't show it to you?

A. No.

Q. Did they say this agreement carried over to the new Company?

A. I believe they did.

Q. Did they show you anything in writing to that effect? A. No.

(Testimony of Gordon S. Peterson.)

Q. Did they tell you that they had been certified by the [841] National Labor Relations Board for this work?

A. No, they never said anything like that.

Q. You don't remember that? Now, Mr. Peterson, you voted on this motion, did you not?

A. What motion?

Q. With respect to the picket line.

A. Yes.

Q. How did you vote on that?

A. It was a secret ballot.

Q. How did you vote on it?

A. Am I required to answer that?

The Court: I guess you are.

A. I voted to respect the picket line.

Q. And thirteen others did, too?

A. One didn't.

Q. Wasn't this a standing vote? A. No.

Q. Are you sure? You don't remember that thirteen men stood up and one man sat down—you don't remember that?

A. I wouldn't be sure of that, but I was under the impression that it was a secret ballot.

Q. What was your impression of voting to respect the picket line?

A. I am a Union man and I don't like to go through a picket line. [842]

Q. There is kind of an unwritten law that no Union will go through the picket line of another Union; is that true?

(Testimony of Gordon S. Peterson.)

A. Well, yes; in a sense it is an unwritten law, and I believe it wasn't our work in the first place, and always have. I believe everybody knows that.

Q. You knew the Company's contract of November 3 had a provision in it that they were not required to go through a picket line?

A. Yes.

Q. Therefore, the Company couldn't call it a violation of the contract? A. No.

Q. Why is it that you find these picket lines so sacred, you wouldn't go through it whether it was legal or not legal?

Mr. Andersen: I object to that as argumentative.

The Court: Yes; objection sustained.

Q. Why did you not go through the picket line?

A. I believe it is a legitimate picket line and I believe it is the Longshoremen's work, is the reason.

Q. No other reason? A. No.

Q. Do you remember the meeting in the City Hall and remember Mr. Roden was the referee?

A. Yes.

Q. It was to determine whether or not you were to have [843] Unemployment Compensation checks?

A. Yes.

Q. Do you remember you were sworn at that time to testify? A. Yes.

Q. Let me ask if at that time you were asked this question and you answered "Why did you with-

(Testimony of Gordon S. Peterson.)

draw your labor? There is no dispute existing between your organization and the Juneau Spruce Corporation?" You said "No." "Why did you withdraw your labor?" That question was asked by Mr. Burtz. Your reply was "As far as I a concerned, fear of reprisal or even bodily harm for attempting to go through the thing set up there now, and which might even be reflected on our children in years to come. I don't feel that I can go through a picket line of that nature for that reason." Did you so answer that question?

A. I believe I did.

Q. Mr. Burtz asked you "Do you think it would be dangerous?" Do you remember your answer to that? A. I don't remember.

Q. Let me refresh your memory. Did you answer that question "I wouldn't want to take the chance myself. I think it would be dangerous."

A. I believe it would, possibly.

Q. Now, the question was asked of you as to what was the policy of the I.W.A. at that time. In other words, why [844] it was that the organization decided to respect this picket line. Do you know now what the reason was, why the I.W.A. respected the picket line?

A. They respected the picket line. Why they respected the picket line?

Q. Yes.

A. They respected—the I.W.A. policy?

Q. Yes. Why did the organization decide to respect the picket line?

(Testimony of Gordon S. Peterson.)

A. You mean Local M-271?

Q. Yes.

A. Because they figured it was the Longshoremen's work.

Q. No other reason?

A. Well, they figured it was a legitimate picket line and that it was the Longshoremen's picket line.

Q. And that they couldn't go through the picket line, isn't that true, that you just don't do such things—isn't that the reason?

A. It just depends upon the picket line.

Q. It depends upon the picket line. Do you remember you attended a hearing before Mr. Melton Boyd on September 23, 1948, in the Senate Chambers of this building, at which you were sworn to testify; do you remember that? A. Yes.

Q. Do you remember that you were sworn to tell the truth? A. Yes. [845]

Q. Now, at that time Mr. Boyd was questioning you and he said this "Now in order that I may fairly appraise your answers, is it your position that Local M-271, by its action, was intending to and it was its avowed purpose to establish the jurisdiction of Local 16, or was its purpose to respect the picket line to permit Local 16 to establish its own jurisdiction?" Do you remember what you answered to that?

A. No, I don't recall how I answered.

Q. I will ask you the same question now and

(Testimony of Gordon S. Peterson.)

see how you answer it. Mr. Peterson, is it your position that Local M-271, by its action, was intending to and it was its avowed purpose to establish the jurisdiction of Local 16, or was its purpose to respect the picket line to permit Local 16 to establish its own jurisdiction?

Mr. Andersen: May it please the Court, I am going to object to the manner in which the questioning is being done. I think the rule is to show the questions and answers to the witness.

Mr. Banfield: I will, if he requests it.

Mr. Andersen: We usually make the request.

Mr. Banfield: Go ahead.

Mr. Andersen: Do you think I am objecting to hear myself talk? May it please the Court, I think the Court [846] understands the purport of what is occurring.

The Court: If the witness is questioned from anything in writing, the rule is that it must be shown to him. Counsel get around that by asking a question in writing without informing the witness it is in writing.

Mr. Andersen: When I tried on cross-examination the Court——

The Court: I haven't ruled yet. In this case it appears that the examination was asked from the record, therefore I think it would be within the rule.

Mr. Andersen: What page is it, counsel?

Mr. Banfield: Page 506 of the record.

(Testimony of Gordon S. Peterson.)

(Whereupon counsel for the plaintiff showed a document to the witness on the stand.)

Mr. Andersen: What lines do you refer to, Mr. Banfield?

Mr. Banfield: They aren't numbered, but it is about halfway down the page.

Q. Now, Mr. Peterson, which was it? What was the purpose of M-271? Was the purpose to establish the jurisdiction for the Longshoremen or to let them try and do it themselves?

Mr. Andersen: May it please the Court, I am going to object to that, so far as this document is concerned. If the purpose is to impeach the witness, if that is the purpose [847] of this thing——

Mr. Banfield: No.

Mr. Andersen: May I finish my statement, please?

Mr. Banfield: Yes.

Mr. Andersen: If it is to establish the fact, as counsel puts it, then what he testified on the sixth is immaterial, unless he wishes it for impeachment purposes. Apparently he doesn't want it for impeachment. What is contained on page 506 of this record becomes immaterial unless it is for impeachment.

The Court: I have forgotten the question. Read the question.

Court Reporter: "Now, Mr. Peterson, which was it? What was the purpose of M-271? Was the purpose to establish the jurisdiction for the Long-

(Testimony of Gordon S. Peterson.)

shoremen or to let them try and do it themselves?"

The Court: Objection overruled.

Mr. Andersen: I am going to make the further objection, may it please the Court, that it simply calls for a conclusion and opinion of the witness. I will withdraw the objection and stipulate he may read the page if he wishes.

Q. Go ahead.

A. I wonder if you would state that over again?

Q. What was the purpose of M-271 in taking this action to respect the picket line? Was its purpose to establish the [848] jurisdiction of Local 16 or to allow Local 16 to deal with the Company and establish its own jurisdiction?

Mr. Andersen: May it please the Court, that assumes something that isn't in evidence and is not proper cross-examination. This witness isn't required to say there was a purpose. The record shows there may have been several purposes that M-271 voted to respect the jurisdiction of the Longshoremen. The record shows several.

The Court: It is legitimate cross-examination. Objection overruled.

Mr. Andersen: I think it is improper when there are several reasons to make the witness say there is only one.

The Court: He isn't compelled to answer that there is one.

Mr. Andersen: I submit the question does. That is why I object to the form of the question.

(Testimony of Gordon S. Peterson.)

The Court: Objection overruled.

Q. What purpose was it?

A. Well, it was the purpose to let the Longshoremen establish their own jurisdiction. We wanted to stay out of the trouble.

Q. That is why——

Mr. Andersen: Have you finished your answer, sir?

A. Yes.

Q. All right. Now, Mr. Peterson, did you testify as follows [849] at the National Labor Relations Board hearing——

Mr. Andersen: Again I make an objection.

Q. "We just did not want to dispute with them. In order not to dispute with them we would not cross their picket line. That is my idea of it."?

Mr. Andersen: I should think counsel would stop talking while I am objecting.

Mr. Banfield: If you wait for me to finish the question——

Mr. Andersen: I suggest that counsel, before he reads stuff, show it to the witness, and maybe we can get along.

The Court: The witness wouldn't know what he was talking about if he didn't state the question first.

Mr. Andersen: All he has to do is hand it to him.

The Court: Whether he points with his finger or states it—there is one of two methods.

(Testimony of Gordon S. Peterson.)

Mr. Andersen: What page do you refer to? The same page? I will stipulate he can read it.

Q. Was that your testimony, Mr. Peterson?

A. Yes, that was my testimony.

Q. What was your answer? Was that the way you testified? A. Yes.

The Court: I don't think it appears in the record even what the question was. [850]

Mr. Banfield: I don't believe it does, after all that.

The Court: I think the jury is entitled to know what it is.

Mr. Banfield: The question was, Mr. Peterson, did you testify at the National Labor Relations Board hearing "We just did not want to dispute with them. In order not to dispute with them we would not cross their picket line. That is my idea of it."

A. Yes, it is there.

Q. Is it also true that at that hearing you testified as follows——

Mr. Andersen: What page, counsel?

Q. 509. Question: "All right. But you were willing that the Company hire Longshoremen to do the work if it would avoid trouble." And was your answer to that question "Yes"? A. Yes.

Q. Now, Mr. Peterson, isn't it a fact that M-271 took this action because they knew that it would be a reflection on them if they went through a picket line and because they were willing to let the Longshoremen establish their own jurisdiction?

(Testimony of Gordon S. Peterson.)

Mr. Andersen: I am going to object to that question as complex. There are two questions in the one question.

Mr. Banfield: I shall withdraw the question.

Q. Mr. Peterson, isn't it a fact that Local M-271 took this action first because as Union men they knew that there would be a reflection on them if they crossed the picket line?

A. Well, that would be one reason; yes—not the only one.

Q. And another reason was that they were afraid that there might be trouble? Is that right?

Mr. Andersen: I am going to object to the question as indefinite.

The Court: It is rather indefinite, but it is cross-examination. If the witness finds it too indefinite he can say that.

Q. Wasn't that the reason?

A. Will you state it again?

Q. Did not M-271 take the action to respect the picket line partly because they felt there would be trouble?

A. Yes, partly because they thought there would be trouble.

Q. And partly because the Longshoremen represented they had a contract with Juneau Spruce that carried over from Juneau Lumber Mills; isn't that right?

A. I wouldn't say exactly that. It was past practice and we felt it was their work.

(Testimony of Gordon S. Peterson.)

Q. You felt it was their work? A. Yes.

Q. Because they said so? [852] A. No.

Q. Did you feel that employees have a right to tell the employer who he is to hire? Is that one of your reasons? A. No.

Mr. Andersen: I object to that as argumentative.

The Court: What was that question?

Court Reporter: "Did you feel that employees have a right to tell the employer who he is to hire? Is that one of your reasons?"

A. No.

Q. You don't think then that it would be proper for the Longshoremen's Union to go down to the Company and demand they be assigned to certain work assigned to somebody else?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness. It is improper cross-examination and argument, may it please the Court.

Mr. Banfield: If the Court please, I am trying to get to the basis of why they refused to go through the picket line.

The Court: Will you repeat the question?

Court Reporter: "You don't think then that it would be proper for the Longshoremen's Union to go down to the Company and demand they be assigned to certain work assigned to somebody else?"

The Court: I think an opinion of the witness on [853] that is immaterial. Objection sustained.

(Testimony of Gordon S. Peterson.)

Mr. Peterson, you said this was legitimate longshore work, didn't you?

A. That is what I feel it is; yes.

Q. By what right do you feel they have a right to do this work?

Mr. Andersen: That is only argument, may it please the Court.

The Court: Well, it seems to me it is somewhat like the previous question. It involves the personal opinion of the witness rather than takes in what the I.W.A. did or acted on.

Mr. Strayer: The only thing is, he testified that one of the reasons they decided to respect the picket line was because it was their belief the Longshoremen were entitled to the work. It seems to me we are entitled to develop the reasons for that belief.

The Court: I am wondering about the propriety. Repeat the last question.

Court Reporter: "By what right do you feel they have a right to do this work?"

The Court: Well, perhaps it is proper in view of his answers. Objection overruled.

Q. Look over here, Mr. Peterson——

Mr. Andersen: I guess he got that habit from your [854] witnesses, counsel.

A. I feel—this is my personal opinion—I feel it is the Longshoremen's work in view of the fact that they were ocean-going scows or barges. They were intending to send them out of Alaska to Canada and the United States, which is interstate commerce, and

(Testimony of Gordon S. Peterson.)

I believe it states somewhere in the Longshoremen's Constitution that anything pertaining to interstate commerce belongs to them.

Q. You think if they put a provision in their Constitution that means the employer must do it?

Mr. Andersen: I object.

Q. Do you believe that the Juneau Spruce Corporation should have the right to hire you to do that work?

Mr. Andersen: Just a moment. I object. It is argumentative.

The Court: I think the objection will be sustained.

Q. On what does this belief that they are entitled to the work rest?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

The Court: Objection overruled.

A. What was the question again?

Q. You stated, Mr. Peterson, you felt the Longshoremen had a right to this work?

A. Yes. [855]

Q. Where does this right come from?

Mr. Andersen: I submit, the question has been asked and answered several times. The witness just stated he felt it belonged to them, it was his personal opinion, because it was ocean-going cargo.

The Court: Objection overruled.

Q. What is this right based on?

A. Well, longshoremen are longshoremen, and

(Testimony of Gordon S. Peterson.)

they have—their work consists of loading or unloading ships or barges or anything like that that has to do with work from the bullrail out. I couldn't be technical on it.

Q. You feel that only members of Local 16 should be permitted to do that work in Juneau?

Mr. Andersen: I object to that as calling for an opinion and conclusion of the witness.

The Court: Objection overruled.

A. I feel that it isn't our work, it isn't the Woodworkers' work.

Q. Do you feel an employer has a right to hire men and assign them to that job?

Mr. Andersen: That is argumentative, may it please the Court, and calls for a conclusion and opinion of the witness.

The Court: Yes; I think so.

Q. Have you done any longshore work in Juneau? [856]

Mr. Andersen: I object to that as improper cross-examination.

The Court: Objection overruled.

A. I worked one boat, I believe.

Q. One boat? A. Yes.

Q. When was that?

A. I don't remember exactly.

Q. Since the strike occurred? A. Yes.

Q. Mr. Peterson, isn't it a fact that when the Longshoremen were associating with the I.W.A. immediately prior to the time the picket line was established, they promised the I.W.A. men, if they

(Testimony of Gordon S. Peterson.)

were out of work, they would put them on as extra men longshoring?

A. That if any of the I.W.A. men were out of work that they would put them extra?

Q. Didn't they promise the I.W.A. men if they were out of work they would put them on as extra men longshoring during the period of the strike?

A. They said they would help them all they could.

Q. Was that the kind of help they indicated they would give?

A. What kind of help is that?

Q. By allowing them work as extra men for the steamship companies? Was that the kind of help and work they offered [857] to give you?

A. Yes.

Q. Isn't it a fact you were the only I.W.A. man who ever got extra work there? You were the only one? A. No.

Mr. Andersen: I object.

The Court: Objection overruled.

Q. What others?

A. I wouldn't be able to say all of the others, but I know I am not the only one.

Q. You don't know the names? A. No.

Q. And you worked on only one boat?

A. I could have had more. I went to work for the Duck Creek Logging Company in the mill.

Q. The Longshoremen would have kept you on longshoring?

(Testimony of Gordon S. Peterson.)

A. I don't know, I have to take my turn.

Q. You go on the wheel and rotate with them, isn't that true? A. Yes, I imagine.

Q. Any time your name got to the top of the list you would be put on there, wouldn't you?

Mr. Andersen: That is only argumentative.

Mr. Banfield: I am showing the witness's interest, may it please the Court.

The Court: Objection overruled.

Q. Isn't it true? [858]

A. I believe that is the way they were working it.

(Whereupon the jury was duly admonished and Court adjourned until two o'clock p.m. May 10, 1949, reconvening as per adjournment, with all parties present as heretofore and the jury all present in the box; whereupon the witness Gordon S. Peterson resumed the witness stand and the cross-examination by Mr. Banfield was continued as follows:)

Q. Mr. Peterson, how many meetings did you have with the representatives of the Company between April the first and the time the picket line went on?

A. With the representatives of the Company?

Q. Yes. A. Just one, that I know of.

Q. Was there a meeting that you attended immediately before the picket line went on, that is the day before—were you present at a meeting?

A. A meeting with the Company?

Q. Yes.

(Testimony of Gordon S. Peterson.)

A. I don't recall any meeting the day before the picket line.

Q. Maybe this will refresh your memory. There has been testimony here from several witnesses that a meeting was held in which Mr. Hawkins was present and representatives of Local 16 and Local M-271, and they have been to the effect that this meeting was on April 9, the day before the strike. Your testimony this morning was, as I remember it, that there was a meeting on the evening of the seventh or the eighth?

A. As near as I can remember it was in the evening of the seventh; at least we asked for a meeting in the evening.

Q. Could it be the other, which was testified to by the others, in the daytime around noon on the ninth and at which they discussed having another meeting that night?

A. I wasn't present at it, if there was such a meeting. I don't recall any such a meeting.

Q. Were there members of the Longshoremen's Union present, which you think was the meeting of the seventh or eighth? A. The seventh; yes.

Q. Do you remember which ones they were?

A. Orville Wheat and Joe Guy.

Q. Well, do you know whether or not there was another meeting on the seventh?

A. I don't recall any meeting—with the Company, you mean?

Q. Yes, in the Company office, with Mr. Hawkins and Mr. Stamm.

(Testimony of Gordon S. Peterson.)

A. No, the only meeting I know of on the ninth was our meeting in the Union Hall.

Q. Were you present when they asked Mr. Hawkins if they could use the drying shed for a meeting?

A. No, but I heard they were trying to get a meeting in the dry shed on the Northland Dock.

Q. Then it was decided later to hold it in the Union Hall? [860] A. Yes.

Q. And it was held in the Union Hall, was it not? A. Yes.

Q. On this meeting, you stated that you went there with another representative of M-271 and representatives of the Longshoremen's Union and a representative of the Company. Did Mr. Hawkins tell you at that time that his Company had an agreement with M-271 which made it the exclusive bargaining agent for all the workers?

A. I don't remember for sure whether he said they had an exclusive bargaining agreement with M-271 or not, but he mentioned something—he always did imply that we were the sole bargaining agent for that work, but it was never written into the contract.

Q. It never was written into the contract?

A. No.

Q. Do you remember at that meeting that he told you that he insisted upon the I.W.A. men doing this work because it was in the contract?

A. Because what?

(Testimony of Gordon S. Peterson.)

Q. Because it was in the contract.

A. No, I don't recall anything like that.

Q. Do you remember him stating that he did not have any contract with the Longshoremen?

A. No, I wouldn't say he said that. He said he wouldn't have [861] anything to do with the Longshoremen.

Q. Wasn't that after he had told you that he had no contract with them, but did have one with the I.W.A.?

A. No; he didn't say anything like that.

Q. In other words, you don't know what was said first, and what was said afterwards?

A. I don't get you.

Q. You don't know the order in which these various points were brought up?

A. Yes, I think I know most of them.

Q. Tell us what was said when the conversation opened, after the introductions.

A. In the meeting with the Longshoremen and the Company?

Q. Yes. A. On the seventh?

Q. Yes.

A. Well, like I said before, I think Gustafson was the first one to say anything and he stated why we were all there, that in order to avoid a work stoppage and like you say, the introductions were first, and Mr. Hawkins knew that they were Longshoremen and he let us in and we met and Gustafson explained that we were there to try to come to some agreement by which the mill could continue

(Testimony of Gordon S. Peterson.)

operations, while they settled whatever differences there were with the Longshoremen, and all we were interested in was keeping [862] the mill running.

Q. The I.W.A. men sat back and let the Company and the Longshoremen do the talking?

A. After that initial introduction, like I told you before, it got pretty hot between Mr. Hawkins and somewhere in that heated argument between the Longshoremen and Mr. Hawkins, like I stated before—the only recourse of the Woodworkers was to prevent a work stoppage, so our members could work, and for the benefit of the community—I don't know what all.

Q. How long were you in this meeting?

A. Not very long, I would say a minute—oh, I wouldn't—I would say three-quarters of an hour probably, altogether.

Q. There was quite a bit of discussion?

A. Quite a bit of discussion.

Q. Quite a bit of discussion before there was any heated discussion, isn't that true?

A. Well, when Gustafson opened the meeting and stated why we were there and that he wanted—I can't recall his exact words—but something to the effect that we didn't want to see the mill shut down, and we would like to see them negotiate, sit down in good faith and negotiate with the Longshoremen because we didn't figure they even knew what they really did want. There were a lot of rumors around. He wouldn't sit and talk. He told

(Testimony of Gordon S. Peterson.)

the Longshoremen [863] that were there he didn't have anything to talk about.

Q. In so many words—nothing he wanted to talk to them about? A. That is right.

Q. As a matter, you were there about half an hour before there was any exchange of words in an antagonistic manner?

A. I couldn't say exactly. It wouldn't be over a half hour.

Q. This flare-up came at the end, isn't that true?

A. Yes; it kept building up toward the end.

Q. The Longshoremen kept insisting they be hired, isn't that true?

A. At that time all the Longshoremen were insisting upon at that meeting would be to sit down and talk the thing over with them, negotiate in good faith, both parties, in order to avoid a work stoppage. He kept insisting he didn't have anything to talk about.

Q. And he didn't want to negotiate with them?

A. That is right.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you, Mr. Peterson.

(Witness excused.) [864]

GLEN JAMES KIRKHAM

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. What is your name, sir?

A. Glen James Kirkham.

Q. I understand you are the son of Mr. Kirkham who testified here the other day?

A. Yes, sir.

Q. Have you been employed at the Juneau Spruce Corporation?

A. I was employed, yes.

Q. How long were you employed?

A. Oh, from just before the Spruce took over up until the time of the strike.

Q. Up until the time of the strike. Were you there during the time Mr. Hawkins was there?

A. Yes, I was there when he came up.

Q. I assume that sometime during the time that you were there there was negotiations? By the way, you belonged to the I.W.A. there, didn't you?

A. I did.

Q. Were you aware of the fact that sometime after Mr. Hawkins arrived there were negotiations of some kind pending between your Union, the Woodworkers, and the Juneau Spruce Corporation? [865] A. Yes, there was.

Q. During that time do you recall having a conversation with Mr. Hawkins regarding Unions and

(Testimony of Glen James Kirkham.)

Union contracts in general? Do you recall such a conversation?

A. Yes. We had that out a few times right on the job.

Q. Right on the job?

A. And a few times when a man would talk about the Union he made a statement that he was going to bust all the Unions because he didn't believe in them.

Q. Mr. Hawkins? A. Yes.

Q. And who was present?

A. I believe my Dad was President of the Union.

Q. Who was present at that time?

A. I wouldn't know the exact time, but it was out in the yard it happened.

Q. Could you tell about what time it was?

A. I would say about a month after he got there.

Q. About a month after he got there, he said he was going to bust the Unions?

A. He said he was going to bust our Union up and didn't believe in Unions.

Mr. Banfield: He started with a conversation; now he makes reference to what they told him. I would like to know if it is hearsay. [866]

Q. At this time you mentioned, about a month after Mr. Hawkins arrived, did you hear Mr. Hawkins personally say that? A. Yes.

Q. And he said he was going to break every Union in Juneau?

(Testimony of Glen James Kirkham.)

Mr. Banfield: That is leading and suggestive, and not what the witness testified.

Q. Again, state what Mr. Hawkins at that time said.

A. He merely stated he didn't believe in Unions and that he was going to break our Union.

Q. Did he refer to any other?

A. He said any unions that came in contact with him.

Mr. Andersen: You may cross-examine.

Cross-Examination

By Mr. Banfield:

Q. Where did that conversation occur?

A. Down at the Juneau Spruce Yard.

Q. What part? A. The back part.

Q. The back part, what we call——

A. The rear part, back where the warehouse and machine shop is, where we stack the lumber.

Q. And who was present at the time?

A. There was Hawkins and his brother-in-law, the younger one— [867] I don't remember his name—and there was one other fellow—I don't remember his name for sure—he was there about a week, and he was the one that was having the trouble.

Q. Were you there for the whole conversation or just part?

A. I was there at the beginning. I was Steward for the Woodworkers' Union and he came to me

(Testimony of Glen James Kirkham.)

about some trouble he had been having about wages.

Q. And the man and you were taking it up with Mr. Hawkins?

A. Yes, taking it up with Mr. Hawkins.

Q. Were you ever on any negotiating committees with Mr. Hawkins? A. No.

Q. You say you were Shop Steward?

A. Yes.

Q. You weren't in on various conversations with Mr. Hawkins from time to time, were you?

A. No.

Q. Do you know for a fact Mr. Hawkins dealt with the Shop Committee from time to time on numerous problems?

A. I don't know anything about it.

Q. All you know is one conversation?

A. This man was in my department.

Q. Do you know what time of year it was?

A. I know it was about a month after he got there, it would [868] be in about May or June.

Q. Somewhere around the first of June?

A. Somewheres around in there.

Q. Do you remember the name of the man who made this statement? A. Not that one.

Q. You don't know the one you were representing? A. No.

Q. You don't know the name of the other man, the man's name besides Mr. Hawkins?

A. One of Hawkin's brothers-in-law, I believe his name is Frank.

(Testimony of Glen James Kirkham.)

Q. What Union did you belong to then?

A. The Woodworkers'.

Q. You were Shop Steward for M-271?

A. Yes.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you.

(Witness excused.)

Mr. Banfield: If the Court please, I move the testimony of the witness be stricken as entirely immaterial.

The Court: I don't see its materiality.

Mr. Banfield: I move it be sticken from the record.

Mr. Andersen: May I state the purpose for the record?

The Court: Yes. [869]

Mr. Andersen: We called young Mr. Kirkham to the stand to testify to the animus existing between Mr. Hawkins and the Longshore Union in particular, or any Union in general. That was the purpose of it. Now, evidence has been introduced that Mr. Hawkins didn't want to do business with the Longshore Union because the Company had a contract with—that is, the Juneau Spruce Mill—had a contract with the I.W.A. Part of our position is that Mr. Hawkins didn't want to do business with the Longshore Union and we will have another witness who will quote Mr. Hawkins as saying he would close his plant before he would do business with the Longshore Union. It goes to the

animus and complete bad faith in refusing to negotiate.

The Court: But how are negotiations involved here? How are they material here?

Mr. Andersen: Under the allegations of the complaint, may it please the Court, they talk about—they accuse this Union, Local 16, of inducement and coercion regarding this so-called jurisdictional strike. That is the ultimate of their case. We are refuting it by showing there was no such interest, no such coercion. Conversely, so far as the Company is concerned, one witness will quote Mr. Hawkins as saying "We will close down this plant before we will do business with the Longshoremen." That goes, as I see it, to an important aspect of the case. [870]

Mr. Banfield: If the Court please, the allegations in the complaint are that this defendant, both defendants, have by strike and by refusing to work for other employers, have induced and encouraged the members of M-271 not to work and the object was to get the work for themselves. What difference does it make what Mr. Hawkins' attitude was in this? It has nothing to do with it. It is a case of, if they did induce the men not to work or not. They haven't set up a defense that M-271 didn't go through the picket line, because they didn't like Mr. Hawkins, or some other method. It is simply a case of where they are trying to describe Mr. Hawkins in some way that has nothing to do with the issues in the case.

Mr. Andersen: With respect to the matter of

pleading, your Honor, I don't believe it is necessary to plead affirmative defense. We simply meet the issues as framed by the plaintiff, affirmative proof under the issues as framed. Mr. Banfield may have one idea about this case. We certainly have different ideas. We take the positions here that Mr. Hawkins, the Manager of the Company and spokesman in Juneau, if he goes so far as to say "We will close this mill before we do business with the Longshoremen," it goes to the question of good faith so far as the employer is concerned and liability to negotiate in good faith under the Taft-Hartley Act, and, if the Court please, credibility of Mr. Hawkins, in so far as it shows animus [871] towards this Union and all Unions in general. We think it is very proper, for those purposes, and within the issues as framed.

The Court: I don't think it is relevant to any material issue. The testimony will be stricken.

ERLAND PEARSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. What is your name, sir?

A. Erland Pearson.

Q. You are a longshoremen, of course?

A. Yes, sir.

Q. And you are presently President of Local 16? A. Yes, sir.

(Testimony of Erland Pearson.)

Q. The Longshore Union, defendant here?

A. Correct.

Q. How long have you been President of this Local 16?

A. Since the first part of July, 1948.

Q. And how long were you a member of this Union prior to that time?

A. I joined Local 16 in October of 1947.

Q. From the time you first became a member of the Union, did you take an active part in its affairs? [872] A. I certainly did.

Q. And since you became President, you have exercised that office, have you? A. Correct.

Q. From the time you first became President of this Union, Mr. Pearson, and prior to the time you were and while a member of the Union, what was the attitude of the Union in relation to willingness to arbitrate this dispute?

A. Local 16 has at all times——

Mr. Banfield: I object. Willingness to arbitrate hasn't anything to do with this case. This employer can't be forced to hire persons because somebody else is willing to submit to arbitration. Under the circumstances, any arbitration means that an employer's rights could be taken away from him.

The Court: I don't see where the necessity of arbitrating anything has anything to do with this case.

Mr. Andersen: May it please the Court, Mr. Banfield through Mr. Flint put in lots of evidence and particularly on cross-examination there was

(Testimony of Erland Pearson.)

lots of evidence, and also it came out on direct examination in relation to arbitration. Your Honor will recall I examined Mr. Flint at length, proper cross-examination, regarding meetings, what was said, and arbitration.

The Court: I remember your examination. I do not [873] recall any testimony of the necessity of arbitrating in Mr. Flint's testimony on direct examination.

Mr. Andersen: Otherwise I am sure I wouldn't have been able to cross-examine on the subject, and I was. Your Honor will recall Mr. Flint was somewhat confused at the difference between arbitration and negotiation. He was examined at length regarding it. We offered the testimony in refutation of Mr. Flint's testimony, and also, may it please the Court, under the pleadings and the issues as framed, particularly as in the Taft-Hartley Act where the sections refer to conciliation where the employer exercises good faith under the provision for conciliation and mediation, that labor disputes be not unnecessarily prolonged but amicably adjusted under the Taft-Hartley Act itself. It is our position, and always has been, that the good faith of the employer here is definitely in issue. This testimony also goes to the further fact that the contract, the longshore hiring contract put in evidence through Mr. Schmidt, which Local 16 contends—and is a fact—carried over from the Juneau Lumber to the Juneau Spruce. There is an arbitration

(Testimony of Erland Pearson.)

clause in that contract and if the Union is willing to arbitrate we have a right to put it in issue. All those contracts have that clause and the contract adopted by the Juneau Spruce Corporation from the Juneau Lumber, when the alleged dispute arose—we take the position, and I will through other witnesses also take the [874] position that the method to immediately settle the dispute was to wit: arbitration, as the contract provides. That is an issuable fact and I offer it under that.

The Court: There is no such contract yet in evidence.

Mr. Andersen: That is the contract put in evidence.

The Court: On the promise it would be connected up. It hasn't been connected up. Any questions with reference to arbitration would seem to be without foundation.

Mr. Andersen: May it please the Court, it has been connected up. I think it was put in evidence. I don't believe my recollection is wrong. I may be wrong. I don't want to get into an argument of the record with the Court. My recollection is that it was admitted into evidence. We called Mr. Schmidt. My notes show it was put in evidence subject to no qualifications of any kind. It is our position that it is an issuable fact in the case. If the contract—if this jury finds it carried over, as Mr. Schmidt testified, it will be our position that this Company had to arbitrate the matter before it could do any-

(Testimony of Erland Pearson.)

thing else. On the basis I have stated, we respectfully state it is admissible.

The Court: My recollection of Mr. Schmidt's testimony as far as this contract is concerned, is that it was put in out of order on condition that it would be connected up. It was admitted in evidence subject to being connected up. I [875] may be wrong, of course, in my recollection.

Mr. Strayer: Your Honor is correct.

Mr. Banfield: Your Honor is correct. In the first place, the contract is simply amendments to the previous contract and was put in on the basis that it would be connected up. I call the Court's attention that counsel has again misstated the record. When Mr. Flint was on the witness stand he was asked about a certain conversation with Mr. Albright, who and when and where, by each side. They went on, one conversation after another. On cross-examination Mr. Andersen kept saying "Didn't he say so-and-so" and "Didn't he offer to arbitrate." We are willing to show what the conversation was. We expected a connection, but a connection never came. That is how the evidence got in here regarding arbitration. None of it was brought in by us whatever.

The Court: I can't see how willingness to arbitrate is relevant here at all.

Mr. Andersen: I have stated it, may it please the Court.

The Court: Yes, I know your position.

(Testimony of Erland Pearson.)

Mr. Andersen: I have stated my position as clearly as I can. If the Court won't permit the evidence to be put in, I would like to make an offer of proof; namely, this witness will testify——

The Court: Perhaps we better have that in the absence of the jury. The jury may be excused until called.

(Whereupon the jury retired from the courtroom.)

Mr. Andersen: In order that I may understand your Honor, do I understand your Honor to say arbitration is not an issue in this matter at all?

The Court: I don't see how it is. I am willing to hear from you.

Mr. Andersen: In order to make sense, I want to know your Honor's position. Do I understand your Honor to rule, even though a contract has an arbitration clause that still arbitration is not an issue in this case?

The Court: I think my ruling contemplated that if there was such a contract here in effect between the plaintiff and the defendant, Local 16, then there would be a predicate for anything that would be relevant, but the condition on which that contract was admitted in the evidence has not yet been met.

Mr. Andersen: Well, then, I mentioned to the Court that—or rather I did this: we put the contract in evidence. It is in evidence, your Honor said, subject to a motion.

The Court: No, subject to your connecting it up.

(Testimony of Erland Pearson.)

Mr. Andersen: But I understand further—I mentioned this to the Court before, I want the Court to understand what I have in mind—we take the position we can't put all the aspects of the case in at one time, may it please the Court. [877] That is impossible. We take the position as a matter of law based upon the facts that that contract which Mr. Schmidt testified had been carried right over to Juneau Spruce—your Honor will recall he testified that was the contract—and after the Juneau Spruce took over they carried right on under that contract, as well as carried over under the I.W.A. contract. It is our position and upon which the jury must find that that contract itself, that is the contract to which Mr. Schmid testified was in full force and effect between the parties from May 1, 1947, on. It is our position that is the question. It is in issue here.

The Court: Before you get farther, my recollection of Mr. Schmidt's testimony was not that the contract carried over, but that the practice inaugurated under that contract carried over. That is a different thing. There is nothing to show here that it would be a matter of law for the Court to decide, that this previous contract between the Juneau Lumber Company and the defendant was assumed by its successor, and the Court hasn't held that and no necessity had arisen for passing on that. Before this testimony that is now about to be offered by this witness could possibly become rele-

(Testimony of Erland Pearson.)

vant, the Court would have to hold that that contract was binding on the plaintiff.

Mr. Andersen: I think we are talking about the same thing, but from different angles. Mr. Schmidt testified [878] substantially as your Honor stated; namely that from and after May 1 they carried on the same practices with not only the Longshoremen but with the I.W.A. that they previously carried on, the I.W.A. contract as well as the I.L.W.U. contract. He even testified grievances were settled. To make my point specific, from that course of conduct on the part of the Company, and the course of conduct of the Longshoremen accepting employment on that same basis, it is our position that the contract was carried over. We contend that it is an issuable factor in the case. We can simply show that. We offer this to ascertain—the evidence is practically in already—that the contract carried over and that it would be their duty to arbitrate. If your Honor thinks, with that statement before you, that the evidence is not admissible, your Honor should so rule.

The Court: The testimony on behalf of the plaintiff is all to the effect that there was never any intention to either assume the contractual obligations of the predecessor or that they ever were, in fact, assumed. Of course, in the interim, you might say, of the expiration of the contract of the predecessor and the execution of the contract of November 3, there would be a necessity arise of adopting some method or practice to iron out any disputes that might arise, but it wouldn't have the effect as

(Testimony of Erland Pearson.)

a matter of law to put into effect the whole contract, and particularly in the face of [879] the testimony on behalf of the plaintiff that they did not assume that contract or any other contract, that it was their purpose to have new contracts executed. In that state of the testimony any evidence as to the willingness or unwillingness of Local 16 to arbitrate is irrelevant.

Mr. Andersen: Just before your Honor rules, then pursuant to your Honor's ruling, I offer—we offer to prove through Mr. Pearson, the witness on the stand, the following facts: that from and after April 30 or May 1 of 1947 there was a contract in effect between the Juneau Spruce Corporation and Local 16, one of the defendants herein, that the contract contains an arbitration clause. We have the contract on our desk. It has an arbitration clause and requires the Company to arbitrate pursuant to that. Mr. Pearson would testify as President of the Union and that prior to July 1 of 1948 and at all times subsequent thereto, Local 16 has at all times been willing not only to negotiate, but to arbitrate, any and all issues involved in the dispute at the yard of the plaintiff herein. I might state that the arbitration clause is in the usual wording.

The Court: Is that a copy of the contract that has already been admitted conditionally?

Mr. Andersen: No; we would introduce this also, may it please the Court.

The Court: What is it? [880]

(Testimony of Erland Pearson.)

Mr. Andersen: The Coast-wise agreement, may it please the Court, which is referred to in the one in evidence, the gentlemen from the Northland Transportation Company, regarding arbitration and settlement of disagreements—he testified yesterday.

The Court: How do you reason that a contract between the Northland Transportation and the Local would be binding on Juneau Spruce?

Mr. Andersen: Because I believe Mr. Schmidt testified the Juneau Spruce authorized the Northland Transportation Company to negotiate for them in all contracts and the Juneau Lumber too, I believe. That is all the waterfront employers up here formed some sort of association, Juneau Dock Employers or some such name, and the gentleman on the stand, I believe yesterday, is Secretary or something of that organization, the gentleman occupies that position, so all the employers here entered into contracts with the Longshoremen's Union—that contract has the arbitration clause to which I refer. The practice of the Pacific Coast, may it please the Court, is somewhat similar, Waterfront Employers' Association of the Pacific.

The Court: The question is whether the Juneau Spruce joined the Waterfront Employers' Association. Where is evidence to that fact? I don't recall any.

Mr. Andersen: I don't believe there is any, may it [881] please the Court. The evidence upon which we rely I have already stated to your Honor. I am

(Testimony of Erland Pearson.)

perfectly frank in stating to your Honor Mr. Schmidt, I believe, on direct examination testified as your Honor indicated, that after the Juneau Spruce took over they did not as their predecessor had done, joined the Dock Employers' Association, at least so far as longshore work was concerned. I don't know if it was limited or general basis, or if at all. We are only concerned in this aspect, but I understand the fact to be after May 1, 1947, Juneau Spruce did not. We consider that an immaterial factor.

The Court: You contend they are bound nevertheless, even though they did not join?

Mr. Andersen: Yes. It is our position, we have raised the question of fact. May I read Section 9 as part of my offer of proof?

The Court: You can do anything you want as part of your offer.

Mr. Andersen: I offer to prove under the contract presently in effect between—presently in effect between the parties, or at least in effect at the time this dispute arose, says "The Secretary of Labor or any person authorized by the Secretary at the request of either party shall forthwith appoint a standing Coast Arbitrator and also standing Local Arbitrator in each of the four regional districts who shall serve for the period of this agreement," and in the event [882] that any Labor Relations Committee—maybe I better read the clause, Section 9. By the way, your Honor will recall that Wayne Morse, who is a Senator now, was at one

(Testimony of Erland Pearson.)

time Arbitrator on the Coast. "In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coastwide basis, such question, at the request of either party, shall be referred for decision to such Coast Arbitrator. In the event that any Labor Relations Committee or the parties hereto fail to agree upon any question of local application within twenty-four hours after it has been presented, such matter, at the request of either party, thereupon shall be referred for decision to the local Arbitrator for the district in which the matter in dispute arises. The Coast Arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwise or local application. If any Standing Arbitrator, Coast or port, shall be unable, refuse or fail to act, or resign, then the Secretary of Labor shall promtply appoint his successor or substitute. The expenses of any arbitrator shall be borne equally by the Association and the Union. Nothing in this [883] section shall be construed to prevent the Labor Relations Committee from agreeing upon other means of deciding matters upon which there has been disagreement."

(Testimony of Erland Pearson.)

It is our position pursuant to this agreement there was at all times available a Coast Arbitrator, a Local Arbitrator or the other arbitration procedure set up in the section to which I referred. It should have been referred to arbitration under the contract and therefore this witness's testimony that at all times they were ready and willing to negotiate and arbitrate is relevant to the issue.

The Court: That is the same contract you contend carried over from the Juneau Lumber to the plaintiff?

Mr. Andersen: Yes, your Honor.

The Court: Since, as I have already held, there is no evidence to that effect, then this testimony as to willingness to arbitrate is without foundation and premature.

Mr. Andersen: May I extend the offer of proof as to the testimony of this witness? We also offer to show by this witness that from April 30, 1947, so far as longshore work in Juneau is concerned, particularly in relation to the Juneau Spruce Corporation, that Local 16 was never advised of any termination of any contract, that on the contrary they were hired in the same manner and under the same conditions under the contract in evidence, that any grievances that arose on the job were settled in the same manner, and further, so [884] far as the Longshoremen are concerned, they were hired in identically the same manner and there was no difference in their relations with the Juneau Spruce and the Juneau Lumber.

(Testimony of Erland Pearson.)

The Court: You make that last offer to show in fact the contract carried over?

Mr. Andersen: Yes, your Honor. I have stated it as clearly as I can. Contracts may be implied or may be expressed. I know of many instances where the Labor Board, like in a famous petition case, a runaway case where the corporation changed states, may it please the Court, as well as name, the National Labor Relations Board held them to be bound by the contract. I don't like to argue with Courts. It seems to be presumptuous. I have stated my facts as clearly as I can. I think it is clearly admissible.

The Court: As I have said before, whether or not this contract that has been introduced conditionally in evidence is binding upon the plaintiff, is a matter of law upon which the Court has not yet had occasion to pass, because the question has not been presented yet. As far as showing willingness to arbitrate under the contract, that hasn't yet been shown to be applicable or to have been adopted by the plaintiff. The evidence is premature.

Mr. Andersen: I think I will then offer this agreement. I think I shall offer it for identification then. I will offer it as de novo. It is intended to complete the [885] Defendants' Exhibit C which is in evidence, and this will be for identification, and in pursuance to our offer of proof we offer the agreement itself in evidence for identification, your Honor.

(Testimony of Erland Pearson.)

The Court: It may be marked for identification.

Mr. Andersen: As part of our offer of proof I would like to extend it one step further. Pardon, what is the number?

Clerk of Court: This exhibit has been marked Defendant's Exhibit No. D for identification.

Mr. Andersen: I would like to show through this witness and appropriate questions that during the life of that agreement there have been many arbitrations under the terms of the arbitration clause to which I referred, of local conditions, disputes which arise between dock employees here and the Longshoremen.

The Court: You may call the jury.

Mr. Strayer: Your Honor please, before the jury comes back I would like the record to show that plaintiff does not object to—and I understand your Honor is not precluding—any competent evidence of any contract between the Company and either of the defendants.

The Court: No.

Mr. Andersen: All I can show is what I have offered to show, that from May 1 on these men were hired in the same [886] manner, in the same way, as stated in the offer of proof, and that grievances were settled in the same way and disputes in the same way and they were never advised of a contract termination or claimed termination. It is our contention—well, I have already stated my position.

(Testimony of Erland Pearson.)

The Court: Your contention is there was an implied contract that was substantially similar in terms?

Mr. Andersen: Yes, your Honor, the same.

The Court: You say you have no objection to that?

Mr. Strayer: I think it all depends on how far that evidence would go. I think counsel's offer of proof should be made by evidence and we can see if it constitutes legitimate evidence.

The Court: Evidence of willingness to prove or arbitrate is premature. There is nothing in the record at the present time showing that the formal contract carried over or that there was an implied contract equivalent in terms. If you put in evidence of that kind, why then it may become relevant to permit evidence of this kind in.

Mr. Andersen: May I state my position again? May I first get a drink of water? Mr. Schmidt's testimony is now before the Court. My offer of proof is now before the Court. As I conceive Mr. Schmidt's testimony and my offer of proof the effect of that, so far as the defendants are concerned, is a contention based upon issuable facts which we [887] feel should go to the jury on the following premise: Exhibit No. C is a contract entered into between Juneau Lumber Mills and Local 16 that was introduced through Mr. Schmidt. He testified that a contract was in effect April 30, 1947. He testified that immediately thereafter they carried on their same practice under this contract

(Testimony of Erland Pearson.)

with the Longshoremen's Union. He testified that thereafter they carried on the same practice, the same terms, worked under the same agreement with the I.W.A. That was his testimony. This witness, as I have already indicated, through the offer of proof——

Mr. Strayer: May I suggest, your Honor, the witness should be questioned.

Mr. Andersen: The only time that action is taken is when a client is on the stand.

The Court: That this witness be questioned?

Mr. Strayer: This is the witness you refer to?

Mr. Andersen: He is the one, and this witness, as I have indicated in my offer of proof, would testify that from and after May—that from and after the date of the contract, there was no change in the working conditions.

The Court: Until when?

Mr. Andersen: Until they finally refused to negotiate with them.

The Court: Well, before the execution of the contract of November 3? [888]

Mr. Andersen: Yes, your Honor.

The Court: How long before?

Mr. Andersen: At least October 3, at least in September, that there was absolutely no change in their hiring practice. Mr. Schmidt has already testified there was no change in the hiring practice. They never advised the Union there was no such contract. The Union carried on in the same manner, they were hired in the same way, paid the same wages except

(Testimony of Erland Pearson.)

when there was a raise and then, of course, Juneau Spruce paid the raise and everybody else paid the raise. There was no question about that. So, it is our position that the contract was in effect, and being in effect, they had to arbitrate; therefore, arbitration here is a relevant matter. We are raising the question that they had to arbitrate. Certainly they say there was no contract. There is no question about that. That is their contention. We contend there is, and was, and go so far as to say there is a contract.

The Court: The Court didn't intend to preclude you from showing there was a contract, and that is the condition under which Exhibit C went into evidence.

Mr. Andersen: The only way to prove the facts, except by stipulation, is by asking the witness.

The Court: You were asking the witness as to willingness to arbitrate. That is my ruling. [889]

Mr. Andersen: Do I understand that the question itself is untimely?

The Court: Yes. In other words, there isn't a sufficient foundation as to the evidence of an implied contract. If you feel you have enough evidence to that fact——

Mr. Andersen: I will ask this witness questions such as from and after May 1, 1947——

The Court: You don't have to explain. You will be permitted to question him as to evidence of any contract, but my ruling that the question of the willingness of the defendant Local to arbitrate is premature, stands. You may call the jury.

(Testimony of Erland Pearson.)

Mr. Strayer: One more thing, your Honor. As I understand your Honor's ruling counsel now will be required to establish a contract and I understand he can question the witness regarding past practice? It has been our position all the way through that past practice is not admissible, unless they reach the point of establishing a contract, we don't think. Such evidence will be of prejudice to the plaintiff if you let it come in unless the Court will rule if it is a jury issue and such a contract. It seems to me if counsel—I think he should state exactly the answers, or by testimony in the absence of the jury, so we can determine if we have evidence to go to the jury.

The Court: It hasn't been the practice of this Court to submit any proof of his good faith. Mr. Andersen is an officer of the Court here and I feel that if he offers to show a certain state of facts at least sufficient to go to the jury, I think he should be allowed to do so without requiring it in advance. It is subject to being stricken if it falls short, but he should be given the opportunity.

Mr. Andersen: I was going to suggest a short recess. I am not sure I understand your Honor.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: You will be given all the opportunity you wish to prove an implied contract.

Mr. Andersen: That is fine.

The Court: You may proceed.

(Testimony of Erland Pearson.)

Q. Again, for the record, you are the President of Local 16? A. That is correct.

Q. As President of the Local, have the affairs of the Local in relation to the employers, come to your attention? A. Yes, sir.

Q. Would you speak a little louder, please, so all of us will hear you. A. Yes, sir.

Q. Prior to—would you glance through Exhibit 3, please. Just take your time and read it.

The Court: You said "3," but I thought it was the [891] contract of November 3?

Mr. Andersen: I thought I said "C." I meant "C."

The Court: The record may show the reference was to Defendants' Exhibit C.

Q. This contract to which I have directed your attention—the collective bargaining testimony of Mr. Schmidt, do you recall that?

A. I wasn't here during the latter half of his testimony.

Q. Do you recognize this contract?

A. Yes, I do.

Q. What is this contract?

Mr. Strayer: Your Honor, please, for the record, might it be understood that we object to all this testimony concerning past relations concerning Juneau Lumber Mills and Local 16, unless it is connected up, on the ground that it is irrelevant and immaterial.

The Court: If it isn't connected up it will be stricken.

(Testimony of Erland Pearson.)

Mr. Andersen: Will you repeat the question?

Court Reporter: "What is this contract?"

A. That is a contract pertaining to working conditions between the Local 16 and the Waterfront Employers of Juneau.

Q. Between Local 16 and the Waterfront Employers of Juneau? A. That is correct.

Q. Do you know if the Juneau Lumber Company was a member of [892] the Waterfront Employers? A. Yes, sir.

Q. And after May 1, or after April 30 of 1947, the date that Juneau Lumber Company sold to Juneau Spruce Company, were the Longshoremen here hired in the same manner?

Mr. Strayer: I object to that as leading, your Honor.

The Court: I don't know—it isn't leading. It may not be, depending on what the rest of it is.

Q. After April 30 of 1947, so far as Juneau Spruce Corporation is concerned, were they hired in the same manner, by the same person, and under the same terms and conditions as they had been hired before?

Mr. Strayer: I object to that as leading, and it is a complex question and also calling for a conclusion of the witness.

The Court: I think in view of the nature of the question that it ought to be split up and call for merely a yes or no answer.

Q. I will put it this way: how were the men

(Testimony of Erland Pearson.)

hired by the Juneau Lumber Company, if you know?

A. Whenever a barge or scow or ship or anything that carried lumber, or water-borne commerce, would come into the Juneau Lumber Mill dock, they would call the Longshore Hall as they do right today, I mean as the other Waterfront Employers do, to ask for a certain number of Longshoremen [893] at a certain time, and the men go down to work at that designated time and perform the work.

Q. After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?

Mr. Strayer: I object to that, the same as before. It is complex and calls for a conclusion.

Mr. Anderson: I submit the question is not complex. It calls for a yes or no answer.

The Court: Yes. Objection overruled.

Mr. Andersen: Will you read the question, Miss Reporter?

Court Reporter: "After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?"

Mr. Strayer: May I make a further objection? I object to anything concerning grievances or method of arbitration or adjustment of disputes.

(Testimony of Erland Pearson.)

The Court: I think it should eliminate those two, grievances and arbitration.

Mr. Andersen: This is my witness. I am asking him the question. This is my witness. This is new matter. I [894] certainly have the right to ask my witness whether there was any grievance there.

The Court: You are not basing this question on past testimony?

Mr. Andersen: What do you mean by "past testimony"?

The Court: That point counsel raises that there was no testimony as far as past practice, grievances or arbitration.

Mr. Andersen: I believe there was, your Honor. I believe there was testimony. Of course, this has been a long trial, and I am sure that I, as well as the jury and your Honor, can't remember everything. It seemed to me I asked Mr. Schmidt about handling——

The Court: Objection overruled. You may proceed.

Mr. Andersen: Will you read the question please, Miss Reporter?

Court Reporter: "After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?

A. No, there wasn't.

Q. Were there any changes in rates of pay, if

(Testimony of Erland Pearson.)

you recall, from May 1, 1947, until we will say, the end of the year?

A. If I remember right, we got an increase. I don't remember [895] the exact amount—I believe twelve and a half cents an hour raise in pay, which took effect——

Q. When?

A. I couldn't be exact as to the date.

Q. About what month?

A. I believe it was in June.

Q. Of 1947? A. I believe so.

Q. And did Juneau Spruce pay that raise in pay for the work they did, the same as all the other employers on the dock?

A. They did. For any Longshoremen that worked there they paid the pay, certainly.

Q. For any Longshoremen they hired?

A. That is correct.

Q. This contract to which I have referred, refers to Local 16, does it not? That is your Local?

A. That is correct.

Mr. Andersen: May I have just a moment, your Honor?

Q. Now, this particular contract which is exhibit No. C, does this refer to the Coast agreement?

A. To the Coast agreement? No, sir. That pertains only to the Juneau Waterfront Employers and Local 16.

Q. Does it in terms refer to the Coast agreement, as far as arbitration is concerned?

(Testimony of Erland Pearson.)

A. That is the understanding all the time; if Local 16 and [986] any one of the Waterfront Employers get into a dispute that cannot be settled here, then through the Local agreement it would go below to the Coast or a Local Arbitrator for settlement.

Mr. Strayer: I move to strike that as not responsive and stating a conclusion and understanding.

Mr. Andersen: He is President of the Local testifying as to the Local.

The Court: As I ruled before, the objection might go to the part on which he was examined.

Q. I direct your attention, Mr. Pearson, to Section 9——

Mr. Andersen: In the interest of time, it would be better to take a recess, and I could correlate this material better.

The Court: I like to split the afternoon session, but if you think we can save time we will take a recess for ten minutes.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: At this time I desire to offer in evidence Defendant's Exhibit D for identification. I assume you have seen it? While counsel is examinging the document, may I read a portion of this, may it please the Court? [897]

(Testimony of Erland Pearson.)

The Court: If counsel do not object. They can't do both.

Mr. Andersen: That is true.

Mr. Strayer: We object to the offer, your Honor, as irrelevant and immaterial. The contract is not properly identified or shown to have any relation to the Juneau Spruce Corporation.

The Court: Is this the same?

Mr. Andersen: If I state it, probably the Court will see the point and counsel will, too. I will read the first portion of Exhibit 3—Exhibit C.

Mr. Strayer: Just a moment. That exhibit is not in evidence, as I understand it, or it is subject to the reservation of being connected up and not proper until then.

Mr. Andersen: It is marked in evidence, your Honor.

The Court: Only conditionally in evidence, and until it is connected up, as I have said before.

Mr. Andersen: How am I going to connect it up unless I read a portion and talk to the witness about it?

The Court: But you are about to read it to the jury.

Mr. Andersen: And to the Court, for the purpose of getting Exhibit D in evidence.

The Court: It is improper to read it to the jury at this time, but you may base your questions to witness on it, of course. [898]

Q. Mr. Pearson, Exhibit C you have already tes-

(Testimony of Erland Pearson.)

tified was the contract which was in effect after May 1, is that correct? May 1, 1947?

A. That is correct.

Mr. Andersen: Now I offer this in evidence, may it please the Court.

Mr. Strayer: That is objected to on the same ground as it was before, not connected with Juneau Spruce Corporation in any way.

The Court: That is the agreement by the Juneau Lumber Mills?

Mr. Andersen: Which we say was carried over from Juneau Lumber to Juneau Spruce, and under which they operated, according to the testimony of Mr. Schmidt and the testimony of Mr. Pearson.

The Court: Whether it was carried over is not for the witness to say. On a matter of law it has to be shown that in fact it was carried over.

Mr. Andersen: That is what I am trying to show.

The Court: You asked the witness if it was carried over. That is a matter for the Court to decide. That is an insufficient basis to consider the exhibit fully in evidence.

Mr. Andersen: What I am trying to do at this moment, may it please the Court, so the Court will have in mind these two documents, Defendant's Exhibits C and D, are really the [899] same document, that is, Exhibit C is an amendment to Exhibit D. Exhibit D is signed by Juneau Spruce Corporation.

Mr. Strayer: Oh, no.

(Testimony of Erland Pearson.)

Mr. Andersen: Sorry, I mean Juneau Lumber Company—signed by them, and this document on its face refers to Exhibit C—on its face refers to Exhibit D, that it is an amendment to Exhibit D. Does your Honor follow me there?

The Court: Yes, I follow that.

Mr. Andersen: Mr. Schmidt has testified that this hiring practice remained the same after May 1 of 1947. This witness testified everything was the same, and it is our contention—which is the only fact that can be inferred from his evidence, of course—that after May 1, 1947, both parties, to wit, Local 16 and Juneau Spruce, adopted this contract through their course of conduct with each other from and after May 1, 1947. That is the testimony of this witness, may it please the Court, and it is on that basis I offer it.

The Court: You are not offering to show an implied contract, you are offering to show a former contract carried over.

Mr. Andersen: Well, certainly, and as an implied contract through their ratification. It doesn't make any difference to us whether it was an implied contract or whether it was the course of conduct of the parties, I guess. It is our position substantially that through a course of conduct between [900] the parties this happened. Either it was actually carried over, or through a course of conduct between the parties, an implied contract arose. Under this agreement, there is no evidence by Mr. Schmidt or

(Testimony of Erland Pearson.)

this witness that it carried over on this contract from this. It is a matter of fact for the jury at this point, as I construe the evidence.

The Court: There is nothing in Mr. Schimdt's testimony that would justify that conclusion, but if you have evidence to show in opposition to the testimony on behalf of the plaintiff, that plaintiff assumed this contract, of course you may certainly go ahead and prove it.

Mr. Andersen: Your Honor, I have already put that evidence in through Mr. Pearson.

The Court: You mean his conclusion it was in effect?

Mr. Andersen: Not his conclusion. He testified as to the facts. He testified that from and after May 1, 1947, his relation—the Union's relation—with the Juneau Spruce Corporation was identical to what it had been with Juneau Lumber Corporation. They were never advised of any termination of any contract. On the contrary, when the Juneau Dock Employers granted a twelve and a half cent raise in June of 1947, according to the witness Juneau Spruce also paid that raise which was under the contract. Now, I don't know what more evidence we can present.

The Court: The most you have shown is that there was [901] a practice here to call on the Longshoremen to do certain work but that is far from showing that that carried over the contract to the successor, to the plaintiff:

(Testimony of Erland Pearson.)

Mr. Andersen: Now, maybe reasonable minds will disagree on what your Honor has stated, not as a matter of law—we are talking about a matter of fact, and maybe reasonable minds will differ. I don't know, but the Longshoremen's position is that having carried on under this contract they ratified it, operated under it, and it became, if not an expressed, an implied contract between the two of them. Mr. Pearson testified under that contention and that a wage increase was paid without trouble. They recognized their duty under the contract to pay it, otherwise, of course, they wouldn't have paid the money. On that basis we contend the contract carried over.

The Court: The Court holds it is insufficient to hold or bind Juneau Spruce Corporation, and to hold that that contract carried over.

Mr. Andersen: Then may I——

The Court: I think the foundation is insufficient. There is no evidence here whatever except to the contrary that Juneau Spruce ever recognized this contract in their dealings with Local 16 after they took over. You might argue that there is an inference to that effect from the fact that they called them up and asked them to come down and do longshore [902] work. That isn't sufficient to put a contract in effect or continue its life.

Mr. Andersen: Your Honor, my position on the point is very simple. There is either a contract in effect or there isn't a contract in effect, whether

(Testimony of Erland Pearson.)

the contract is expressed or whether the contract is implied. Whether the contract is in effect either as an expressed contract or an implied contract is an issue of fact, as I see it.

The Court: But there have to be facts first. There is no ratification, no testimony that Juneau Spruce said "We will continue this contract in effect." The fact that they called up the Longshore Hall and hired somebody to come to do longshore work isn't an implied contract. That is an expressed contract from time to time, as occasion arose. That isn't inconsistent with the testimony of the plaintiff, that they never adopted this contract or expressly repudiated it.

Mr. Andersen: So far as the Longshoremen are concerned, may it please the Court, there was no repudiation of the contract.

The Court: No, I am speaking of the plaintiff.

Mr. Andersen: We are not bound here by the plaintiff's position, may it please the Court. Certainly the plaintiff comes in here and offers one theory, one chain of evidence. We are not bound by that.

The Court: You have to show plaintiff did something [903] from which it could be inferred they intended the contract to continue and be bound by it, and the evidence so far is too short of that.

Mr. Andersen: Yes, it has to be shown, you and I agree. Possibly as to the quantum we don't agree. This witness has adequately shown that the Juneau

(Testimony of Erland Pearson.)

Spruce carried on under and adopted this contract, whether we call it expressly or impliedly, it is immaterial so far as that is concerned. Maybe I can develop it further.

The Court: I am not going to cut you out from developing it, but at the present the Court's impression is that practice similar under this contract falls short of binding the plaintiff in this case. If you want to go into it further, you may.

Mr. Andersen: Mr. Roden directed my attention to the Taft-Hartley Act. They couldn't divest themselves of the relationships with their employer. Of course, that is a matter of law I assume your Honor has taken into consideration in your Honor's ruling. I also want to direct another matter to your Honor's attention, so far as the contract is concerned. It is in evidence for another matter. It was introduced in evidence in impeachment of Mr. Flint. Mr. Flint, you will recall, stated that the longshoremen never had a contract with—that is, the Juneau Spruce never had a contract with—Local 16. He testified to that very emphatically. We offer this [904] contract also for the purpose of showing there was such a contract.

The Court: You mean with Juneau Lumber?

Mr. Andersen: Yes, Juneau Lumber. At the time we offered it in evidence when we were talking to Mr. Flint with regard to it, shortly after Mr. Flint left the stand, I offered it with relation to Mr. Flint. He said there was no contract between

(Testimony of Erland Pearson.)

Local 16 and Juneau Lumber, and I asked Mr. Schmidt specifically if it referred to Local 16, and it went in evidence on that basis.

The Court: It doesn't become available for every other purpose, and particularly for binding the plaintiff.

Mr. Andersen: It is in evidence.

The Court: Only for that limited purpose.

Mr. Strayer: It was not put in evidence for that. Mr. Flint never testified to no such contract. He testified there was never a longshoremen's practice.

Mr. Andersen: He testified there was an investigation. I asked "Did you make an investigation?"

The Court: That is immaterial, anyhow. Even though it is in evidence for that purpose it is not evidence for showing plaintiff corporation was bound by it.

Mr. Andersen: I was under the impression that when an exhibit is admitted for evidence it is for all purposes.

The Court: Not if it is for a limited purpose.

Mr. Andersen: I didn't limit my offer. No objection was made to its going in. Mr. Schmidt testified——

The Court: It couldn't have gone in for any other purpose, except for what it would rebut at the time.

Mr. Andersen: I will endeavor with Mr. Pearson.

(Testimony of Erland Pearson.)

Q. (By Mr. Andersen): Do you recall, Mr. Pearson, after May 1, 1947, whether there were any grievances arose on the job, discussed with the management in the same way they were discussed before?

Mr. Strayer: I object to that in the absence of the proper foundation. The witness testified he didn't become a longshoreman until 1947.

Mr. Andersen: He testified he is the president and familiar with its affairs.

Mr. Strayer: He can't testify to what happened before October.

Mr. Andersen: That is the objection I made on the case in chief, but if the witness knows——

The Court: Unless he knows, his testimony would necessarily have to be based on hearsay.

Mr. Andersen: The official affairs of the union, your Honor.

The Court: At a time when he was not president?

Mr. Andersen: He is president of the union now. I will submit the objection to your Honor. [906]

The Court: He may answer if he knows.

Q. Do you know?

A. I would like to have it restated.

Mr. Andersen: Read the question.

Court Reporter: "Do you recall, Mr. Pearson, after May 1, 1947, whether there were any grievances arose on the job, discussed with the management in the same way they were discussed before?"

(Testimony of Erland Pearson.)

A. By the "management"—what do you imply there—the Juneau Spruce Corporation?

Q. Yes.

A. All I know is that we were continually trying to get a written contract with them.

Q. To supplement Exhibit C?

Mr. Strayer: I object to that, your Honor, as calling for a conclusion and not within the knowledge of the witness. There is no proper foundation for it.

Mr. Andersen: That may be stricken.

Q. What I mean is whether any grievances on the job came up? For instance, you mentioned a twelve and a half cent wage increase you got in 1947. How did you get that? How did it come about?

A. Through negotiating with the Waterfront Employers of the Pacific Coast.

Q. And after that negotiation did all of the dock employers [907] here, including Juneau Spruce, pay that twelve and a half cent raise?

A. It applies automatically.

Q. Did you have any trouble getting it from Juneau Spruce? A. No, sir.

Q. Well, were your checks automatically increased that much money?

A. That is right. There was no trouble.

Q. That is the wage raise matter. Do you recall, or do you know—strike that. From time to time a minor dispute would arise on jobs and there

(Testimony of Erland Pearson.)

is a grievance clause in Exhibit D, I think—do you have in mind when minor grievances arose on jobs, were they taken up and settled with the Juneau Spruce in pursuance to this contract?

Mr. Strayer: May we have the time?

Q. After May 1, 1947, and up to November of 1947?

A. To my knowledge we had no trouble with the Juneau Spruce except we were trying continually to get a written contract with the new people.

Q. With the new company?

A. With the new company.

Q. Of course, until April 10 of 1948 the Local 16—did Local 16 do all the longshoring done there the way they had done, with the exception of this dispute about the barge?

A. To my knowledge they did; yes. [908]

Q. Is it true that all during that period you men had been hired in the same manner that you were hired before by Juneau Lumber?

A. Up to October?

Q. No, up to November 3, 1947.

Mr. Strayer: May we have the full question read, your Honor?

Mr. Andersen: Will you read it, Miss Reporter? The question wasn't answered. I will have to call another witness to supplement it. You may examine.

(Testimony of Erland Pearson.)

Cross-Examination

By Mr. Strayer:

Q. Mr. Pearson, you started work as a longshoreman in October of 1947?

A. I became a member of the local, but I worked as a longshoreman from the fall of 1946 on, off and on.

Q. Isn't it a fact you were employed by the Juneau Spruce Corporation during the summer and early fall of 1947?

A. 1947; I went to work for Juneau Spruce Corporation on August 11 and quit sometime the first part of October.

Q. You quit on October 15, did you not?

A. Sometime in the first part of October, I believe.

Q. What were you doing between May 1, 1947, and October 15, 1947? [909]

A. I was doing a little trolling and working extra longshoring.

Q. How much of that time did you work at longshoring?

A. A considerable amount of time.

Q. How much?

A. I have no records to show, but I worked a considerable amount of time.

Q. About how much?

A. About how much?

Q. Yes.

A. At least once a week on the average.

(Testimony of Erland Pearson.)

Q. During the entire period?

A. No, I wouldn't say that. I am taking the whole time as a—what I mean is taking the time—you mean from May to October?

Q. Yes.

A. I couldn't say exactly. I did considerable longshoring.

Q. Can't you say during what period of time you did that? Let's get at it this way: when did you start work for the Juneau Spruce Corporation in 1947? A. August 11.

Q. And you worked for them until October 15?

A. Yes.

Q. We have got the period from May 1 until August 11. What were you doing during that period of time? [910]

A. As I say, I was fishing. I have a trolling boat. I was trolling and doing longshoring on the side when I would come into town for something.

Q. You were doing longshoring off and on?

A. Correct.

Q. Did you do any longshoring for Juneau Spruce Corporation during that period?

A. No, I didn't.

Q. Then you never worked as a longshoreman for the Juneau Spruce Corporation prior to October 15, 1947? A. Prior to October 15?

Q. Yes.

A. I worked one boat for the Juneau Spruce Corporation, but I am not sure of the time. I believe it was later than October 15, 1947.

(Testimony of Erland Pearson.)

Q. Is that the only work you have done for Juneau Spruce Corporation?

A. No, sir. I worked there from August 11——

Q. I mean as a longshoreman.

A. Yes, I believe it is.

Q. What was that boat—was it a commercial steamer? A. No.

Q. What kind of boat?

A. It was a cannery tender, I believe, or a small boat. I don't remember. [911]

Q. Was that the only time you worked as a longshoreman for Juneau Spruce?

A. Myself, yes.

Q. Who paid you for that work, Mr. Pearson?

A. Well, the Juneau Spruce usually paid for it, but in this instance another fellow and I, Joe Guy and I, were working on the boat and the skipper went up—or rather, we went over to the office to turn in our time and be paid, but the Juneau Spruce, they absolutely refused to pay us at that time, so the skipper of the boat had to go to the Juneau Spruce and get cash and he paid us in cash, because the Juneau Spruce Corporation refused to pay us.

Q. About when was that?

A. To my knowledge, I believe it was the latter part of November.

Q. The latter part of November of 1947?

A. That is correct.

Q. Who called you down there to do the work?

(Testimony of Erland Pearson.)

A. Juneau Spruce Corporation.

Q. Did they call you personally?

A. They called the hall, called the delegate.

Q. Did they talk to you?

A. Juneau Spruce?

Q. Yes.

A. No, sir. They did down there, yes. [912]

Q. No, I mean who called the hall and ordered the men to come down?

A. I have no idea of who was calling, but somebody in the office.

Q. You have no personal knowledge of who called, do you?

A. I know it was somebody from the Juneau Spruce Corporation.

Q. How do you know?

A. Because the employer always calls the hall.

Q. How do you know it wasn't the cannery tender that called? A. How do I know?

Q. Yes.

A. I couldn't answer that question.

Q. You say Juneau Spruce usually called you, but on this one occasion the cannery tender skipper paid you? A. Yes.

Q. How do you square that with the statement that you never worked for Juneau Spruce except the one time?

A. Because Juneau Spruce called and asked for men and if they did as before, naturally Juneau Spruce would have paid us.

(Testimony of Erland Pearson.)

Q. Did Juneau Spruce ever call you and pay you for longshore work?

A. Like I told you, I just worked for them this one time.

Q. So you never got any money from Juneau Spruce Corporation directly for any work that you did for them, did you?

A. I got it from them indirectly. The skipper went over and [913] secured the money to pay us.

Q. You never got any money from them directly for any longshore work you ever did?

A. I considered it directly because it just changed hands.

Q. When you say "Juneau Spruce usually paid them" you are talking about other longshoremen and not yourself, isn't that correct?

A. That is correct.

Q. When you are talking about Juneau Spruce Corporation paying that raise in pay, did you get that raise in pay from the Juneau Spruce Corporation?

A. It was applicable at the time I worked, so I automatically received it.

Q. And that is the basis for your statement that Juneau Spruce paid the same rate of pay that other employers were paying?

A. Absolutely.

Q. I am talking about this twelve and a half cent increase you got.

A. I said approximately twelve and a half cent increase.

(Testimony of Erland Pearson.)

Q. I understand. After you signed up your agreement with the Waterfront Employers, putting in effect that increase, you longshoremen wouldn't work for any less than that, would you?

Mr. Anderson: That assumes something not in evidence. It assumes there was no agreement. [914]

Mr. Strayer: Mr. Pearson testified the wage rates were increased twelve and a half cents.

Mr. Andersen: He said there was some sort of arbitration for a wage increase and——

The Court: He is questioning him to find out if the Juneau Spruce increased it, or whether it was the Waterfront Employers or whether they increased their own pay, in order to clarify it.

Q. Do you remember the question, Mr. Pearson.

A. No.

Mr. Strayer: Would you read the question?

Court Reporter: "After you signed up your agreement with the Waterfront Employers, putting in effect that increase, you longshoremen wouldn't work for any less than that, would you?"

A. From time to time wage raises come into any contract.

Q. Can't you answer that question yes or no and then explain it, Mr. Pearson?

A. We are paid exactly what our contract calls for.

Q. Will you work for less than that?

A. Not under our contract; no.

Q. Suppose I call up your union hall for you

(Testimony of Erland Pearson.)

to come do work for me. Would you work for me for less than the contract price agreed to with the Waterfront Employers?

A. As a union man I would live up to my contract. [915]

Q. Yo uconsidered those wage rates as binding on anyone who called for your services?

A. Correct.

Q. And you wouldn't work for any other wage, would you?

A. That is the way I looked at it.

Q. Would you work for any other conditions, other than what was in the contract?

A. That is what a union is for, to get conditions and live up to them.

Q. If you worked for anyone the work you did would be under the conditions you had with that Waterfront Employers' contract?

A. Absolutely.

Q. Mr. Pearson, don't you work as a longshoreman for a lot of people with whom you have no contract?

A. With whom we have no contract?

Q. Yes.

A. That is a kind of hard question to answer, but all the Waterfront Employers of Juneau signed a contract with Local 16 and the employers who don't sign that contract automatically live up to the waterfront agreement with the longshoremen, and carried it out as such.

(Testimony of Erland Pearson.)

Q. How many employers are there that just follow along on the terms of that contract without themselves making a contract with you? [916]

A. Roughly, I would say twenty-five.

Q. There are many occasions when itinerant boats come to Juneau and call on you for longshore work, isn't that right?

A. Many of these small boats have a contract with us.

Q. Many of them do not, too, don't they?

A. That is correct.

Q. Then you furnish longshore services to those people, too, don't you? A. Certainly.

Q. And you draw the same rate of pay as you do with a contract with the others?

A. Correct.

Q. And the same deductions? A. Yes.

Q. You have the same size crews?

A. The size of the crews varies with the size of the job.

Q. But in accordance with your port rules, don't you? A. That is correct.

Mr. Strayer: That is all.

Redirect Examination

By Mr. Andersen:

Q. Just a few further questions. Mr. Strayer asked you about not having contracts with waterfront employers. [917] You said they referred—they all lived up to the Waterfront Employers'

(Testimony of Erland Pearson.)

agreement. What agreement did you refer to?

A. The Waterfront Employers of Juneau agreement with Local 16.

Q. Is this the agreement here, is this Exhibit C? Is this the type of agreement?

A. That is correct.

Q. This is it? A. That is correct.

Q. With respect to the Juneau Spruce company —Juneau Spruce Corporation—did they at any time tell the longshoremen's union as far as you know, as far as longshore work—as it had been done there in the past, that any agreement had been terminated? A. No, sir.

Mr. Andersen: I again renew my offer.

Mr. Strayer: The same objection.

The Court: What is the offer?

Mr. Andersen: Exhibit C being in, Exhibit D being a part of Exhibit C.

The Court: To show what?

Mr. Andersen: To show the implied contract between the parties.

The Court: Objection sustained.

Mr. Andersen: That is all of this witness. [918]

Mr. Strayer: Just a moment. May we have this marked for identification?

The Court: It may be marked for identification.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 21 for identification.

(Testimony of Erland Pearson.)

Recross-Examination

By Mr. Strayer:

Q. Mr. Pearson, handing you a document marked Plaintiff's Exhibit No. 21 for identification, I will ask you if that is not a copy of the contract which you had with the Waterfront Employers in Juneau in September, 1947?

A. I couldn't answer that. I was not a member of the local at that time.

Q. You don't know what contract they had in September, 1947?

A. Yes, I do, the one that was just handed in.

Q. Is this it?

A. That isn't the contract. That runs for the Territory of Alaska, not for the Port of Juneau.

Q. Was it applicable to the Port of Juneau?

A. Partially; yes.

Q. You do know that a contract was in effect then, between Local 16 and the Waterfront Employers here in Juneau?

Mr. Andersen: I think the witness has answered the question, may it please the Court. [919]

The Court: I beg your pardon?

Mr. Andersen: I think the question has been asked and answered.

The Court: He answered he didn't know because he was not a member of the local, and later intimated——

Mr. Andersen: He said it was a contract for the Territory of Alaska.

(Testimony of Erland Pearson.)

The Court: He certainly intimated that he knew what it was. You may question him further if you wish.

Mr. Strayer: May I have this one marked for identification?

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 22 for identification.

Q. Now, Mr. Pearson, here is an exhibit marked Plaintiff's Exhibit No. 22 for identification. Do you know whether that was in effect between Local 16 and the Waterfront Employers of Juneau in 1947?

Mr. Andersen: This is all immaterial, may it please the Court. I can't see the purpose of it. As I understand the Court's ruling, the Court isn't allowing Exhibits C or D in, and Mr. Schmidt and this witness testified contracts were in effect. Unless counsel says it is a supplement to these contracts——

The Court: I don't see your point.

Mr. Strayer: Defendants contend Exhibit C was in [920] effect to 1941. I am trying to identify the contracts in 1947. I am trying to find out if those and not the others were in effect.

Mr. Andersen: Exhibits C and D are one document. They contain the annual renewal clause. They keep going from one year to the other. Mr. Schmidt testified it was in full force and effect and automatically renewed. The fact that it is dated in 1941 is immaterial. I fail to see the relation of

(Testimony of Erland Pearson.)

these agreements and your Honor's ruling regarding C and D.

Mr. Strayer: Mr. Schmidt said that they were similar.

Mr. Andersen: He said C was it.

The Court: Your purpose now is to show what the contract really was with its amendments or supplements?

Mr. Strayer: I am merely trying to find out what it was.

Mr. Banfield: I think I got counsel started. The purpose is to show the agreements of 1938 have gone by the boards years ago and by their terms, and have been superseded by new agreements, and that is it in September, 1947.

The Court: Not binding on the plaintiff?

Mr. Banfield: Just rebuttal. If the Court is allowing them to go in they are terminated, and new contracts have taken effect.

The Court: These contracts, Plaintiff's Exhibit C, [921] the only purpose for which it was introduced was to show the relation with the plaintiff's predecessor, and no other purpose.

Mr. Strayer: That is all the questions, your Honor.

(Witness excused.)

VERNE ALBRIGHT

called as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. You have been sworn, Mr. Albright? When did you first learn that this dispute was in existence at the Juneau Spruce?

A. At the Mayor's Fact Finding Committee. I was called from Cordova.

Q. When was that?

A. The fore-part of May.

Q. The fore-part of May of 1947?

A. Last year. 1948.

Q. I mean 1948. Where had you been for the two or three months prior to May of 1948?

A. Cordova and Seward.

Q. Cordova and Seward? A. Yes, sir.

Q. Had you been in Juneau for two or three months prior to May of—put it this way: when was the last time prior to May, 1948, that you were in Juneau?

A. I passed through Juneau on the Denali in the latter part of December, sometime of 1947.

Q. Of 1947? A. That is right.

Q. Now, you say you came to Juneau then in the first part of May, is that correct? A. Yes, sir.

Q. Of 1948. Now, when you got here did you communuicate with Local 16?

(Testimony of Verne Albright.)

A. Yes, they met me at the plane station. They had wired for me.

Q. They met you at the plane station. When you came here did you endeavor to assist them?

A. They asked me to and I did.

Q. That is Local 16? A. Local 16.

Q. From that time on while you were here in Juneau and in relation to the dispute, what was your capacity? How did you act and what was the nature of it?

A. I was representing Local 16 at their request.

Q. You were representing Local 16?

A. That is right. [923]

Q. And in that capacity did you have various meetings with various people? A. Yes, sir.

Q. And what were you endeavoring to do?

A. To reach a settlement in the dispute, a peaceable settlement.

Q. As representative of Local 16, you were endeavoring to reach a settlement? A. Yes, sir.

Q. Did you have meetings with Mr. Flint?

A. Yes, sir.

Q. And did you meet with other people here in town? A. Yes.

Q. Did you have a meeting with Mr. Flint together with a Mr. Garst? A. Yes, sir.

Q. And who was Mr. Garst?

A. The Federal Mediator, out of the Federal Mediation and Conciliation Service.

Q. Do you know how long he remained in town?

(Testimony of Verne Albright.)

A. About three days, something like that.

Q. You say he was Federal Mediator?

A. Yes.

Q. Did you have a meeting with Mr. Garst and Mr. Flint?

A. With Mr. Burtz and—— [924]

Q. Mr. Burtz and Mr. Flint?

Mr. Strayer: May we have the time?

Q. Do you recall the date of the meeting?

A. It was sometime during May, I don't just know the date.

Mr. Andersen: Could I have that exhibit? I think it is dated May 14—the pink letter, Mr. Clark.

Q. I show you Plaintiff's Exhibit No. 6, and you can look at the date on that and see if it refreshes your memory.

Mr. Strayer: May 6 is it? Is it, Mr. Andersen?

Q. May 15; it is Plaintiff's Exhibit 6.

A. Yes, I remember.

Q. You remember that meeting, do you?

A. Yes, sir.

Q. And Mr. Garst you say was there?

A. Mr. Garst and Mr. Burtz called me at the Gastineau and asked me to meet them at the Baranof, and I already had met with Mr. Card.

Q. Was Mr. Flint there?

A. Not at that time. I think he came in later in the evening.

Q. With respect to this letter dated May 14,

(Testimony of Verne Albright.)

were you asked to do anything with relation to this letter?

A. Yes. That proposal was brought out by Mr. Burtz and Mr. Garst asked me my opinion, and I told them I didn't think it would be satisfactory. Mr. Garst wanted to know if I would take it back to the local committee, and I did the [925] next day.

Q. Did the local act upon it? A. Yes.

Q. Did you have any further meetings with these people?

A. I believe this was on Sunday, and Mr. Garst left next day, I believe, or the day after that, without further meetings—for Los Angeles, which was his home town.

Q. He was here three days, the government mediator, and then he went back to Los Angeles?

A. That is right.

Q. Nothing was accomplished towards mediation while he was here? A. That is right.

Q. That was about May 14?

A. About that time.

Q. How long did you remain in town after that?

A. I was here off and on, with short trips out, practically all the summer.

Q. About what time did you leave?

A. I can't recall just what dates or what times —I made short trips—I went to Ketchikan once and over to Sitka one time, but I can't recall——

Q. You were here most of the time?

(Testimony of Verne Albright.)

A. Yes, most of the time.

Q. You would go around and then back? [926]

A. Yes. I was at Pelican City also.

Q. Do you recall if you had a subsequent meeting with Garst before he left, after the fourteenth?

A. He only met with us. He came down and shook hands and said he was leaving. He said he couldn't do anything and went as far as he could.

Q. In any event, he left without having settled the matter, is that true? A. That is right.

Q. After that meeting of May 14, did you again have any meeting with Mr. William Flint?

A. They were off and on meetings.

Q. In your same capacity, representing Local 16? A. That is correct, sir.

Q. And were you able to work anything out toward settling this matter? A. Nothing.

Q. In any of your conversations with him did you suggest arbitration? A. Yes.

Mr. Strayer: I object to that as immaterial.

The Court: Yes, it is immaterial.

Mr. Andersen: I beg your pardon, your Honor?

The Court: Objection sustained.

Mr. Andersen: As I recall Mr. Flint's testimony there were denials of it. With respect to Mr. Flint's testimony, it goes to the entire conversation, your Honor.

The Court: That may be, but the witness is not testifying to the rest of any conversation now.

Mr. Andersen: I can't hear your Honor.

(Testimony of Verne Albright.)

The Court: The witness is not testifying, as I understand his answer, or pretending to, to the rest of any conversation.

Mr. Andersen: That was the purport. I thought to save time by not asking all that was said.

The Court: The Court doesn't remember now every conversation by this witness or anybody else.

Mr. Andersen: If your Honor will recall, Mr. Flint first said he had one hundred conversations with Mr. Albright. After that he boiled it down to about four where there was really any conversation. We had this long to-do about Mr. Flint denying arbitration, then he admitted he was confused about negotiation and arbitration. With this witness I am endeavoring to clear that up.

The Court: It is not a matter of getting the rest of the conversation?

Mr. Andersen: To find out the entire conversation.

The Court: That applies where the adversary brings it out, and you brought it out on cross-examination.

Mr. Andersen: I will abide by your Honor's ruling, [928] if your Honor's ruling is that it is immaterial, that is all right with me.

The Court: Objection sustained.

Q. In all of these meetings with Mr. Flint, did you tell Mr. Flint, when the occasion arose did you tell Mr. Flint whom you were representing?

A. I always acted as representative of the local.

(Testimony of Verne Albright.)

Q. Did you tell Mr. Flint that?

A. Yes. He was aware of the fact.

Q. Did you ever tell anybody in this city that you would see that the pickets stayed on down there for ten years or twenty years or any other period of time, sir? A. Not that I can recall, sir.

Q. About May 8, did you talk to Mr. Flint about removing any picket lines.

Mr. Strayer: May 8 or 28, did you say, counsel?

Q. Eighth.

A. On the eighth—I can't recall if I talked on the eighth or a specific date, but one time there was discussion of removing the picket line.

Q. What was that?

A. We had a discussion pursuant to removing the picket line and letting the I.W.A. go back to work.

Q. When you use the word "we," on whose behalf are you speaking? [929]

A. I am talking of Local 16.

Q. Did you ever, during any of your visits here, during this dispute, did you ever have any authority or had you been given authority by the International Union, to, on their behalf or as their agent, participate in this dispute? A. No.

Mr. Strayer: I object to that as calling for a conclusion of the witness. The exhibit in evidence, the Affidavit of Mr. Albright, states all his authority was in the form of oral instructions from Mr. Bulcke. He is entitled to testify what the oral in-

(Testimony of Verne Albright.)

structions were, but not a conclusion as to what his authority may have been.

Mr. Andersen: My question was general, may it please the Court.

The Court: Will you repeat the question?

Court Reporter: "Did you ever, during any of your visits here, during this dispute, did you ever have any authority or had you been given authority by the International Union, to, on their behalf or as their agent, participate in this dispute?"

A. No.

The Court: The objection is overruled, anyhow.

Q. Did Mr. Flint ever talk to you about advice in relation to I.W.A., do you recall?

A. Not that I recall. [930]

Mr. Andersen: You may examine.

Cross-Examination

By Mr. Strayer:

Q. As I understand you, Mr. Albright, your testimony is that everything you did in connection with this dispute you did at the request and on behalf of Local 16? A. That is correct.

Q. And you had no instructions whatever from San Francisco in that regard?

A. That is right.

Q. You testified the other day that you were employed by the International Longshoremen's and Warehousemen's Union?

A. That is correct.

(Testimony of Verne Albright.)

Q. And you draw your salary from the international? A. Correct.

Q. You testified your territory, I believe, was Alaska? A. Correct.

Q. And that you were supposed to assist and advise all the locals in the Territory of Alaska?

A. When they so request me to represent them.

Q. And give them such assistance as you can?

A. Correct.

Q. Those are your instructions?

A. Correct. [931]

Q. As the result of that you travel around a good deal from one local to another?

A. That is right.

Q. I think you said during the summer of 1948 you traveled to Ketchikan, Sitka, Pelican City and other places? A. Right.

Q. Those trips you took on behalf of Local 16?

A. No.

Q. Whose?

A. When one of those locals would request me to come it was in their behalf.

Q. Did you make a trip to Prince Rupert in August, 1948, on behalf of Local 16?

A. On behalf of all the Alaska locals.

Q. On behalf of all the Alaska locals you went down to Prince Rupert? A. That is correct.

Q. Was it on business of Local 505 of Prince Rupert?

A. It had something to do with that.

Q. It had a great deal to do with Local 16?

(Testimony of Verne Albright.)

A. Correct.

Q. To see that lumber was not unloaded at Prince Rupert? A. It did not.

Q. It had nothing to do with that?

A. That is right. [932]

Q. Did you arrive there before the barge got there? A. I think it was the day before.

Q. Was the barge there when you got there?

A. I think not.

Q. The barge got there while you were there, then? A. I think it did.

Q. You took Mr. Joe Guy with you, or did he go a different way?

A. He went on his own. I didn't take him with me.

Q. Did he arrive at the same time you did?

A. I think he did.

Q. Was he there on union business too?

A. I don't know what he was down there for.

Q. You were there during the time the barge was there, were you?

A. The barge was there when I left.

Q. Did you talk to the longshoremen down there regarding the labor troubles up here at Juneau?

A. No.

Q. You didn't say a word to them about it?

A. No.

Q. You didn't talk about the trouble Local 16 was having with Juneau Spruce Corporation?

A. No. I had other business there.

(Testimony of Verne Albright.)

Q. That had nothing to do with what you went down there for? [933] A. No.

Q. Did you leave the same day the barge left?

A. I don't know when the barge left.

Q. Where were you prior to going to Prince Rupert?

A. In Ketchikan, I was there three weeks prior.

Q. Prior to going to Prince Rupert?

A. That is right.

Q. Did you have any communication from Local 16?

A. Not to my knowledge—that I can recall, I should say.

Q. You don't recall any telephone calls or correspondence? **A. No.**

Q. You destroy all correspondence, so you wouldn't know for sure?

A. That is not the reason I destroy correspondence.

Q. But you don't have any correspondence?

A. Yes.

Q. One of your duties is to make reports to Mr. Bulcke in San Francisco regarding your activities?

A. To the International.

Q. Do you make that report every two weeks?

A. Once a month or every two weeks.

Q. Did you make a report regarding this dispute at Juneau?

A. I told them the general progress of it.

Q. How often did you make reports to San

(Testimony of Verne Albright.)

Francisco regarding the dispute between Local 16 and Juneau Spruce Corporation? [934]

A. Only as part of the general report I made concerning other locals in the Territory and other issues.

Q. You keep them advised of all progress or lack of progress up here? A. Right.

Q. And you told them what about it?

A. As near as I could.

Q. And you passed on to the International what you understood the facts to be about the dispute?

A. That is correct.

Q. You don't have, as I understand it, any copies of those reports you made to the International? A. I have not.

Q. Or you don't have any of the letters you received from the International in return?

A. No, sir.

Q. It is a fact, is it not, Mr. Albright, all the way through this dispute in the summer of 1948 you acted as spokesman for Local 16 in these matters? A. Whenever they asked me.

Q. Whenever you had a meeting you acted as spokesman? A. At their request.

Q. And on July 4, 1948, you appeared before the C.I.O. Industrial Union Council to speak on behalf of this Local 16, did you not? [935]

A. I can't recall. I think I did.

Q. You spoke in favor of passing a resolution, didn't you, at that time?

A. I merely stated the issues of the dispute as

(Testimony of Verne Albright.)

I seen them. I had no authority in the Council. I am not a member.

Q. Did you recommend a resolution in support of Local 16?

A. I couldn't recommend anything. I was not a delegate to the Council. I had no authority.

Q. Do you recognize this, Mr. Albright, as a copy of the resolution passed by the C.I.O. Industrial Council on that date? A. Yes, sir.

Mr. Andersen: May I see it?

Mr. Strayer: Yes. May we have it marked, please?

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 23 for identification.)

Q. Plaintiff's Exhibit No. 23 for identification is a copy of the resolution that was passed?

A. That is right.

(Whereupon counsel for plaintiff handed the exhibit to Mr. Andersen.)

Q. And after this resolution was passed by the Industrial Union Council, isn't it a fact that you——

Mr. Andersen: I am going to object to any use of the resolution. It is not in evidence. It has nothing to do with [936] this. It is incompetent, irrelevant and immaterial.

Q. Isn't it a fact after its passage you took it to the newspaper and asked the newspaper to publish it here in Juneau?

Mr. Andersen: The same objection.

The Court: Objection overruled.

(Testimony of Verne Albright.)

A. I don't believe I took it to the newspaper. I think a committee of the longshoremen or the Industrial Council did, but I didn't.

Q. You deny you took it there? A. Yes.

Q. Who was the committee that took it down?

A. I do not recall.

Q. Any of them? A. I don't recall.

Q. Was it this present Industrial Union Council?

Mr. Andersen: I object.

Mr. Strayer: I offer it in evidence.

Mr. Andersen: The same objection. Mr. Albright's name isn't mentioned, nor is he referred to in it.

The Court: What is the purpose of the offer?

Mr. Strayer: The purpose of the offer, your Honor, is to show the participation by Mr. Albright in the action of Local 16 and of Mr. Albright himself in inducing the C.I.O. council itself in condemning the I.W.A. and supporting the [937] I.L.W.U., and because the publication——

Mr. Andersen: There is nothing in the document to show Mr. Albright induced anything.

Mr. Strayer: I think it is a matter of inference. He said he spoke and gave them what he thought was the facts.

Mr. Andersen: That doesn't follow at all, may it please the Court. The Industrial Union Council here, as I understand it, is composed of many unions which, I further understand, is an autonomous body which does as it pleases.

(Testimony of Verne Albright.)

The Court: That objection goes to the weight, but I think it is admissible. It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 23.)

Mr. Andersen: I further object to it as hearsay, incompetent, irrelevant and immaterial, may it please the Court, and no foundation has been laid for its introduction.

Q. May I ask you another question about the resolution. Didn't you give a copy of that resolution to a newspaper reporter here in Juneau?

A. It could be, but I don't recall.

Q. Don't you recall you gave a copy to Robert Druxman and asked him to publish it?

A. I don't think I did.

Q. You have no recollection of having given it to him? A. That is correct. [938]

Q. To refresh your recollection, let me ask you didn't you meet Bob Druxman on the street after July 4, the date of this resolution, and ask him to write a story to put in the paper about this resolution? You have no recollection of that?

A. No.

Q. Isn't it a fact he asked you to furnish him with a copy of the resolution and you went and got a copy and went and brought him a copy?

A. He might have asked for a copy, but I didn't ask him to write a story.

Q. You don't recall that?

A. I didn't ask him to write a story.

(Testimony of Verne Albright.)

Mr. Strayer: I will read this if I may, your Honor, It says: "July 4, 1948. Resolution Condemning the Strikebreaking Action of Certain Officers and Members of I. W. A. Local M-271, of Juneau, Alaska.

"The Juneau Industrial Union Council, C.I.O., an organization composed of delegates from all C.I.O. Locals within the City of Juneau, Alaska, held a special meeting on July 4, 1948, and discussed the action taken by certain officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O. After considerable discussion by the delegates to the Council it was the unanimous opinion that should the Council permit such action by any members of its C.I.O. affiliates to go unchallenged [939] or for such members to escape the responsibility of their acts would be to jeopardize all the gains and conditions established in the past by organized labor, and the following resolution was adopted: Resolution

"Whereas: Certain officers and members of I.W.A. Local M-271, Sawmill Workers C.I.O., have publicly stated that they will return to work at the mill of the Juneau Spruce Corporation in disregard of the picket lines established by the I.L.W.U. Local No. 16;

"Whereas: The picket line is the only weapon available to organized labor when negotiations fail or the employer refuses to bargain; therefore, these certain officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O., are guilty of attempting to destroy the only economic weapon of labor, which act is a direct violation of the principles of good union-

(Testimony of Verne Albright.)

ism and as such is abhorrent to, and condemned by, all labor; and

"Whereas: No labor organization can condone such action by any of its members, and inasmuch as any union member acting as a strike-breaker must assume the full responsibility of his act; therefore,

"Be It Resolved: That the Juneau Industrial Union Council go on record as condemning the action of these certain officers and members of the I.W.A. Local M-271, Sawmill Workers, C.I.O., as that of strike-breaking; and [940]

"Be It Further Resolved: That the Juneau Industrial Union Council highly commend the action of those officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O., who have loyally and justifiably refused to participate in the above action; and

"Be It Finally Resolved: That copies of this Resolution be sent to the National CIO, to all State and Territorial Industrial Councils, and to all Central Labor Councils, and also be released to the press and radio. Juneau Industrial Union Council. Fred Orme, Secy-Treasurer. Seal."

Q. Mr. Albright, I will ask you if it isn't the effect of the passage of this resolution and dissemination of it to blacklist those who passed the picket line?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: You might ask him if he knows.

Mr. Andersen: The same objection, and calling for a conclusion of the witness. It is improper cross-examination.

(Testimony of Verne Albright.)

The Court: Objection overruled.

A. I wouldn't know.

Q. You don't know? A. I don't know.

Q. How long have you been engaged in Union matters, Mr. Albright—actively engaged?

A. In Local I.L.W.U., Local 62, since 1941 I have been a [941] member since then to the present date.

Q. 1941. Were you engaged in Union activities before that time?

A. Before that, here and there.

Q. You have been a Union man all your life?

A. Not all my life.

Q. You have been an International Representative of I.L.W.U. since when?

A. Since the tenth of November, 1947.

Q. And yet you don't know——

The Court: Since when—what was that date?

A. The tenth of November, 1947.

Q. You don't know the effect of branding a man as a strikebreaker?

Mr. Andersen: I object to that. It is argumentative.

The Court: It is not argumentative. Objection overruled.

A. To answer that question you ask me, if this resolution—if I knew the effect it had, I don't know. I don't know how far it was disseminated around the country. I have no knowledge.

Q. Answer my question. Do you know the effect of branding a man as a strike-breaker?

(Testimony of Verne Albright.)

A. I wouldn't want to be one. I don't think it is honorable.

Q. What is the effect if he wants to get a job?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial, and calling for a conclusion and it is argumentative.

The Court: He may answer if he knows.

A. That is hard to answer, very hard. I wouldn't know for sure the extent of it.

Q. You just don't know? You acted as spokesman for Local 16 before the Mayor's Fact-Finding Committee? A. Correct.

Q. And stated the position of the Local Union for that body's consideration? A. Correct.

Q. The first part of May?

A. The first part of May; the fore-part of May.

Q. Didn't you tell the Mayor's Fact-Finding Committee that the dispute with Local 16 was only the beginning? Didn't you intimate if the Longshoremen lost this dispute with the Juneau Spruce that this same demand would be made by other employers in Alaska?

Mr. Andersen: I object to that as speculative.

The Court: The question is what he said.

Q. Did you say that then?

A. I can't recall any such conversation or such remark. I think that what you have got in mind—only you have twisted it—I said at the meeting this might be a start. It is an [943] upset in the practice in Alaska and might immediately spread to other

(Testimony of Verne Albright.)

ports and other Unions, and other companies might demand the same thing.

Q. It was true, wasn't it, in your opinion?

A. That is right.

Q. You were confronted about that time or shortly after that with the same or similar situation in Sitka, were you not?

Mr. Andersen: I object. Reference to Sitka is not within the direct examination.

The Court: It goes to his relations with the defendant. Objection overruled.

A. What instance in Sitka?

Q. I am talking about an argument between the Longshoremen and the lumber company over the right to load barges.

Mr. Andersen: In Sitka, counsel?

Q. In Sitka.

A. In Sitka—I made a trip in 1948 over there, but it was concerning the barges and sizes of gangs on the barges. I sat with the Local and the local sawmill. It was not over this part of it.

Q. Isn't it a fact there was a dispute there which arose in part at least because the sawmill workers were loading lumber on barges?

Mr. Andersen: I object to that. It is improper cross-examination. It isn't a discussion now about authority, but entirely different.

The Court: It goes to his relations with the defendant, I.L.W.U.

A. I never made a trip over there on a dispute.

(Testimony of Verne Albright.)

Q. I don't care if you did or not, I am asking if there wasn't such a dispute up there?

A. Not that I ever took part in.

Q. Don't you know there was such a dispute?

A. No.

Q. Didn't you testify before the National Labor Relations Board that there was?

A. I said it could be possible there was such a dispute.

Q. Well, let's see what you said. You remember testifying before the National Labor Relations Board? A. Yes, that is true.

Q. I am reading from page 464. I will ask you if this question was asked and the answer given by you. Question by Mr. Paul, "Is there any difficulty or labor dispute existing or claimed at Sitka, regarding barge loading?" A. "Yes, two barges left there loaded by sawmill workers." Does that refresh your memory?

Mr. Andersen: You should——

Q. "I received this complaint by wire from there quite some time ago and the other one just recently. The Longshoremen were not aware what a true registered dispute is." Do [945] you recall giving that testimony?

A. I don't. If it is in the record, I must have.

Q. Does that refresh your memory, that you do have knowledge?

A. No. Perhaps such a dispute did exist, innumerable disputes occur.

Q. Isn't it a fact after Mr. Card presented this

(Testimony of Verne Albright.)

letter suggesting a proposal for settlement of this dispute by the Juneau Spruce Corporation, May 14, 1948, isn't it a fact you suggested certain changes in the letter? Do you recall that?

A. I suggested certain changes which they tried to get, but Mr. Card wouldn't consent to it.

Q. Isn't it a fact you suggested certain changes in this letter and the matter was sent back to Mr. Card and he drew up a new letter and incorporated the very changes you asked for? A. Not correct.

Q. It is not?

A. He made a change, but not the changes I requested.

Q. Now Mr. Banfield has put a parenthesis around a clause in this letter, "Nets, Gear, Pallet Boards, Etc." As a matter of fact, the only change you wanted was to add in those letters which are now in parenthesis?

A. No. I asked that that type of longshore work be pencilled out and that is the way they did it, and I told them it was [946] not satisfactory.

Q. Not satisfactory to you?

A. That is right; that I would take it back to the Local committee.

Q. Didn't you tell Mr. Burtz when you were talking about this letter, didn't you tell him you had heard from the International and didn't dare sign this letter because it would upset the whole set-up in Alaska?

A. I don't recall that conversation.

Q. Didn't you tell Mr. Burtz you would have to

(Testimony of Verne Albright.)

maintain that picket line at all costs? A. No.

Q. There was no such conversation?

A. That is right.

Q. Didn't you go to a meeting that night, Mr. Albright, and tell the people at that meeting, including Mr. Burtz, Mr. Flint, the I.L.W.U. and I.W.A. representatives, and tell them you had a telephone call from the International and the Local had a letter from San Francisco headquarters, and the whole deal was off, you couldn't go through with it because it would establish a bad precedence?

Mr. Andersen: Which night?

Mr. Strayer: The same night.

Mr. Andersen: May 14?

Mr. Strayer: The fourteenth. [947]

A. I don't recall a meeting of that kind or that conversation.

Q. You don't recall? A. No, sir.

Q. You considered that if you agreed to the terms of this letter it would have set a bad precedence?

A. I merely said I didn't believe it would be acceptable to the committee. The next day the committee turned it down. I don't have authority to say. It is the rank and file, the committee of the Local, the rank and file.

Q. Do you recall your testimony at the Unemployment Compensation Commission hearing in connection with this dispute?

A. It is quite a long time ago.

Q. You appeared there? A. Yes.

(Testimony of Verne Albright.)

Q. As a representative of the Longshoremen, did you not? A. That is right.

Q. Do you recall testifying before that body, Mr. Roden, I believe, was in charge of that hearing?

A. That is right.

Q. Do you recall testifying that the I.L.W.U. had a dispute with the Juneau Spruce Corporation?

A. That is right, a dispute.

Q. You were talking about the International?

A. Local 16.

Q. Did you tell them Local 16? [948]

A. I said "I.L.W.U." That is common practice. I.L.W.U. means the Local.

Q. Let's see just what your testimony was, page 16.

Mr. Paul: The first half?

Q. About the middle of the page. Mr. Albright, I will ask you if this series of questions and answers was given at that hearing, Mr. Roden asking the question. "What is your official position?" Answer. "International Representative for the International Longshoremen's and Warehousemen's Union." Mr. Burtz asked you "Does your organization have a dispute with the Juneau Spruce Corporation?" Answer. "Yes, sir." Do you recall giving that testimony?

A. That is right, talking from the point of Local 16, that was the understanding.

Q. Turn over to the next page, page 17. Were these questions asked and these answers given: Mr.

(Testimony of Verne Albright.)

Burtz asked, "Is your organization recognized throughout the United States, Canada and Alaska as having jurisdiction over the loading of cargo on seagoing vessels?" Answer, "On the West Coast we are." Were you still talking about Local 16?

A. The I.L.W.U. as a whole; yes.

Q. Mr. Burtz asked, "How long has the I.L.W.U. Local No. 16 furnished employees for the loading of lumber from the Juneau Spruce Corporation or its predecessor?" Answer, "Approximately ten years." Do you recall giving that [949] testimony?

A. That is right.

Q. Mr. Burtz asked, "No one questioned your right as Longshoremen to perform that work?" Answer, "No." Mr. Burtz asked, "Is the present dispute with the Juneau Spruce Corporation because the Company will not establish wages or working conditions, or what is the argument?" Answer, "They refuse to recognize us." Do you recall giving that testimony? A. I think that is correct.

Q. Were you still talking all the time about Local 16? A. That is right.

Q. Mr. Burtz asked "Did they make a public statement that if you were legally certified they would recognize you?" Answer, "I understand they did." Do you recall giving that testimony?

A. Yes, I think that is correct.

Q. Certification, of course, refers only to the International, doesn't it? A. No, sir.

Q. All right. Mr. Burtz asked, page 18, "They are

(Testimony of Verne Albright.)

hiding behind technicalities and have an unfair labor dispute with your organization?" Answer, "That is correct." Do you recall giving that testimony?

A. If it is in the record, if it is correct. [950]

Q. Still talking about Local 16, no reference to the I.L.W.U.? A. That is right.

Q. Just how does this I.L.W.U. function with its Locals? I am speaking particularly with reference to the charters. Are Locals chartered by the International?

A. They are given to the Local as an affiliate.

Q. Local 16 holds a charter from the International? A. Yes.

Q. And Local 505 at Prince Rupert also holds a charter from the International?

A. I think so. I have not seen it.

Q. Members of the Local are members of the International? A. Of the Local.

Q. That entitles them to the benefits of the International? A. Services of the International.

Q. Your contracting system, Mr. Albright, here on the West Coast—your International is the one that negotiates your contracts, is it not?

A. They do, and I think you will note it is on behalf of the Locals.

Q. The contract which applies on the Pacific Coast is written in San Francisco? A. Right.

Q. By Mr. Bridges, Mr. Bulcke and—I have forgotten the others?

A. Quite a number from the Coast. [951]

(Testimony of Verne Albright.)

Q. That master Coast contract applies all up and down the Pacific Coast? A. No, sir.

Q. It does not? A. No.

Q. Does it apply in Alaska?

A. We have an all-Alaska contract agreement.

Q. The contracts down there don't apply to Alaska?

A. Supplementary; we work here under the Alaska Longshoremen's Contract.

Mr. Andersen: I object to any further reference to the content of those agreements unless they—because they would be the best evidence of what they contain. The agreements are on the desk, which I offer. It is D for identification. That is the best evidence of what it contains regarding Alaska. I object.

Mr. Strayer: I am merely inquiring about the method of negotiating contracts.

Mr. Andersen: It is set forth in the contract itself and also in the Constitution.

The Court: I wouldn't think the method only, but what is agreed by the contracts. Objection overruled.

Q. You were just explaining to me, Mr. Albright, about the Alaska contract. How is that negotiated?

A. It is negotiated by—it is usually done in [952] Seattle or where the steamship operators are most available. We generally go where they most want us to. It is usually negotiated by some of the International Negotiation Committee on behalf of the Locals, subject to the ratification of the Locals in Alaska.

Q. Who acts on that Negotiation Committee down there?

(Testimony of Verne Albright.)

A. They are never the same. Generally the International officers, the Executive Board members, or whoever happens to be available—different negotiators.

Q. Did Mr. Bulcke negotiate one?

A. August 23, the greatest part of it.

Q. Do you read "The Dispatcher"?

A. Quite often.

Q. Is "The Dispatcher" the official newspaper of the International Longshoremen's and Warehousemen's Union? A. That is right.

Q. That is a copy of "The Dispatcher," is it not?

A. That is correct.

Mr. Strayer: Let me have this marked for identification, please.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 24 for identification.

Mr. Andersen: May I see it, counsel?

Q. It is dated September 17, 1948; is that [953] correct?

Mr. Andersen: May I see it, counsel?

Mr. Strayer: Certainly. I want to identify it here first.

A. September 17, 1948; yes, sir.

Mr. Andersen: Do you refer to any particular portion?

Mr. Strayer: Yes, I am going to.

Mr. Andersen: Will you show it to me?

Mr. Strayer: Yes.

(Testimony of Verne Albright.)

Q. I refer you to page 6 of this issue of "The Dispatcher," which you have identified as "The Dispatcher" for September 17, 1948—withdraw that. This appears here that it is published every two weeks at 150 Golden Gate Avenue, San Francisco. Is that your understanding? A. That is correct.

Q. And according to the masthead that Harry Bridges is President, J. R. Robertson, First Vice President, Lincoln Fairley, Research Director, Louis Goldblatt, Secretary-Treasurer, Germain Bulcke, Second Vice President, and Morris Watson, Information Director. Are you acquainted with those officers? A. Yes, sir.

Q. And Morris Watson appears to be the Editor?

A. That is correct.

Q. Page 6—I ask you, did you furnish the information upon which this article was prepared? [954]

Mr. Andersen: That would obviously call for a conclusion and opinion of the witness. None of the articles there purport to be written by the witness.

Mr. Strayer: I am merely finding out if he furnished information, the same as in this article.

Mr. Andersen: I can't see the relevancy.

The Court: He may answer if he knows, if he furnished the information.

Mr. Andersen: He doesn't know, from what it says there.

The Court: If he doesn't know, he can say so.

A. It could have come in from the Local. They usually send in news reports.

(Testimony of Verne Albright.)

Q. My question is, did you furnish the information? A. For that article?

Q. Of the same character as in this article?

A. No, it wasn't necessary. The Secretary of the Local actually acts as Corresponding Secretary and corresponds with the Editor of the paper and sends information to the paper. Usually that is their request.

Q. Did you send the same information to your superior as appears in this article?

A. Let's see that again, please.

Q. I would like to have you read the following article while you are at it. [955]

Mr. Andersen: I object. It calls for a conclusion and opinion of the witness.

Mr. Strayer: Only if he knows.

The Court: He ought to know if he furnished the same or similar information.

A. This is better writing than I do. I do know about this Alaska contract. I merely wrote——

Mr. Andersen: That isn't the question. The question is whether you supplied that information?

A. No.

Q. You did not supply the same information?

A. That is right.

Q. But did, regarding the Alaska contract?

A. And that it had been ratified and they were pleased with it.

Mr. Strayer: We will offer this issue of "The Dispatcher" in evidence as an admission against interest

(Testimony of Verne Albright.)

of the I.L.W.U. Counsel has seen it. The article is here.

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial, and also, may it please the Court, I may be in error, but I know of no law which permits him to offer that for any purpose. It is either in evidence or it isn't. It may not be for a particular purpose. It is either admissible or inadmissible. If he offers the paper in evidence I am entitled to read the whole thing. [956]

The Court: If it is for a specific purpose it is limited to that purpose, although you can introduce the rest of it on your case. The only question, as I see it, is whether this constitutes an admission of the I.L.W.U. You offer it for that purpose?

Mr. Strayer: Yes, your Honor.

The Court: It may be admitted for that purpose only.

Mr. Strayer: May I put a pencil line around the article my offer is limited to, so there will be no misunderstanding what portion is offered?

The Court: Very well.

Mr. Andersen: Why not just read that portion into the record?

Mr. Strayer: That is what I was going to do. If you have no objection, I will do that.

Mr. Andersen: We object that it is incompetent, irrelevant, immaterial, and no foundation has been laid.

The Court: Objection overruled on the grounds stated.

(Testimony of Verne Albright.)

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 24, page 6.

Mr. Strayer: Page 6. The article on page 6 of this "Dispatcher," dated September 17, 1948, reads as follows: "Unfair Charges"——

Mr. Andersen: Will you please read the name of the person who wrote it? It is at the head of the [957] column, I believe.

Mr. Strayer: I don't see it.

Mr. Andersen: I thought I saw it there. It is under this heading there, "Seattle Watchmen."

Mr. Strayer: Sort of a pen name, do you mean?

Mr. Andersen: I don't know, but it says "Seattle Watchmen."

Mr. Strayer: I don't know what the reference is. Up at the lefthand column it says "Seattle Watchmen" and in the middle of the page is the article I would like to read, "Unfair Charges. A Taft-Hartley hearing against Local 16 is scheduled for Juneau, Alaska, September 21. The I.L.W.U. is charged with unfair labor practices for picketing the Juneau Spruce mill, which insists on using members of the International Woodworkers of America for longshore work on its barges and scows, contrary to practice established in 1941.

"The I.L.W.U. struck the mill last April after trying for months to get a contract with new purchasers, the Juneau Spruce Corporation, for longshore work on the same terms as the rest of the port.

"The Company signed with the I.W.A. for mill

(Testimony of Verne Albright.)

work alone, then in January ordered I.W.A. members to load lumber on its barges. In spite of conferences with the I.L.W.U. and statements from the I.W.A. that it did not want this work, the mill refused to negotiate with regular longshoremen. [958]

"When the I.L.W.U. hit the bricks, the I.W.A. respected the picket lines fully. The mill was shut down tight. Company charges of unfair labor practices were thrown out by the N.L.R.B.

"Then Bill Flint, President of the Juneau I.W.A. Local, was sent to Portland at the expense of Juneau Spruce to confer with I.W.A. International President James Fadling. He returned to Juneau with orders to his members from the International to disregard I.L.W.U. pickets in line with the Company's wishes. A number went back to work on pain of losing their jobs and seniority, enough to enable the Company to resume operations.

"Local 16 is maintaining its picket lines to protect its jurisdiction of longshore work in the mill. I.L.W.U. Second Vice President Germain Bulcke has informed all Canadian I.L.W.U. Locals that Juneau Spruce Mill products are unfair."

Q. Now, what is the effect, Mr. Albright, in Union circles, of declaring products of the Company unfair?

Mr. Andersen: The same objection, may it please the Court, calling for a conclusion and opinion of the witness; incompetent, irrelevant and immaterial. Could I have the number of that last exhibit, Mr. Clerk?

(Testimony of Verne Albright.)

Clerk of Court: Twenty four.

The Court: Objection overruled.

A. Well, it is pretty hard to tell just exactly the effect [959] taken.

Q. No good Union man will handle a product which your International says is unfair?

A. The law forces——

Q. Will Longshoremen handle a product which your International headquarters says is unfair?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, and calling for a conclusion and opinion of the witness.

The Court: Objection overruled.

A. We are forced to under the law.

Q. Will you answer the question?

Mr. Andersen: I submit, does he want the witness to say he is not law abiding?

The Court: He apparently is not satisfied with a legal phrase. Objection overruled.

Q. Will members of your organization handle a product which your International says is unfair?

A. I can't answer the question, only that we don't violate the law. We are prevented from it.

Q. You want the jury to understand the Longshoremen will handle Juneau Spruce lumber then?

A. Down below?

Q. Yes.

A. I don't know what course they would take—I know what [960] course Canada's Longshoremen took—the steps taken are what you people say, but in the States—it didn't go to the States.

(Testimony of Verne Albright.)

Q. You know what course Canada's Longshoremen took?

A. But they are under a different law.

Q. As the result of Mr. Bulcke informing all the Canada Locals that Juneau Spruce products were unfair?

Mr. Andersen: I object.

The Court: He can ask him if he knows.

A. I don't know.

Q. You have no information at all? A. No.

Q. Have you been in touch with Mr. Berry down in Vancouver?

A. Occasionally, over the phone.

Q. About this particular labor dispute?

A. No; not over the phone.

Q. Didn't you talk with Mr. Berry recently about the effect of the National Labor Relations Board decision? A. Down in San Francisco?

Q. When you were attending the convention of the International? A. Yes.

Q. In April? A. The first part of April.

Q. As International Representative? [961]

A. As a visitor.

Q. And Mr. Berry was in the same capacity?

A. That is right.

Q. Did you talk with him at that time?

A. Yes.

Q. And you discussed the decision of the National Labor Relations Board?

A. I don't remember. The fact is, I don't think we had the decision when I was down there.

(Testimony of Verne Albright.)

Q. The decision came down about April 1, did it not?

A. I don't think I heard it or seen it until after the convention was over.

Mr. Andersen: I think you are both right. I think it came out a little bit later than that. It always takes several days for the National Labor Relations Board to get them out, Mr. Strayer.

Q. It appears to be dated blank day of March. Assuming it came out around the first of April, you don't think you knew about it at the time you were talking with Mr. Berry? A. No, I don't.

Q. Did you send a telegram to Mr. Berry after the National Labor Relations Board decision?

A. No.

Q. Did you either see him personally, or telephone him or telegraph him that the National Labor [962] Relations Board decision didn't make any difference?

A. No.

Mr. Andersen: I assume this is again subject to the extra-territorial objection I made before?

The Court: The same ruling.

Q. You never did? A. No.

Q. You never talked to him about it. Let me ask you a question on this article. Did you recommend Mr. Bulcke inform the Canada Locals that the Juneau Spruce was unfair?

A. I didn't recommend anything to Mr. Bulcke.

(Testimony of Verne Albright.)

Q. You gave the facts and he made his own recommendation? A. I didn't.

Q. You told him there was a strike up here at the Juneau Spruce mill? A. He was aware of that.

Q. You told him the Juneau Spruce Corporation had taken over the operation from Juneau Lumber Mill? A. Correct.

Q. And did you tell him that the Company signed with the I.W.A. for mill work alone, and then in general ordered the mill workers to load lumber on its barges?

A. I don't believe I went into details that way. I merely stated at different times, different parts of the dispute. [963] I can't recall I sent in any of that information.

Q. Did you tell him the Longshoremen had always done that work before? A. Undoubtedly.

Q. Did you tell him that the process of loading lumber on barges and shipping by barges was a new operation with this new Company?

A. I don't remember that.

Q. That is a fact, is it not?

A. I don't consider it a new operation. It happens at other ports, maybe not in this port.

Q. In this case?

A. I think it is a new type or way of handling lumber.

Q. You didn't consider there was any difference?

A. No; it still goes into commerce.

Q. You consider the Juneau Spruce Corporation

(Testimony of Verne Albright.)

is bound by any contract or practice which may have been followed by the predecessor?

A. That is right.

Q. And that was your position all the way through?

A. That is the way all work is based, for the employee to work.

Q. Did you report that view you had to Mr. Bulcke?

A. I didn't think it was necessary to report it.

Q. Did you? [964]

A. I didn't think it was necessary to report it.

Q. Whether it was necessary or not, did you report it? A. No.

Q. Did you report to Mr. Bulcke about Bill Flint going down to Portland?

A. I cannot recall. I don't believe I did.

Q. You don't think you told him anything about that? A. No.

Q. Did you tell Mr. Bulcke about Mr. Flint coming back from his International, about his orders from his International about his men going back to work?

A. Yes, I think I reported when they did go to work.

Q. You reported to Mr. Bulcke?

Mr. Andersen: May it please the Court, this article is dated May 17.

Mr. Strayer: September 17.

Mr. Andersen: I thought you said May 17.

(Testimony of Verne Albright.)

Q. Did you report to Mr. Bulcke the number of I.W.A. men who went back to work on pain of losing their jobs and seniority?

A. No, I don't think so.

Q. You don't know where he got that information? A. No.

Mr. Strayer: I think that is all.

Mr. Andersen: Is that all? [965]

Mr. Strayer: That is all.

Mr. Andersen: No further questions. You may step down.

(Witness excused.)

(Whereupon the jury was duly admonished and Court adjourned until ten o'clock a.m. May 11, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: May it please the Court, at this time I wish to renew my motion to strike evidence in relation to the I.L.W.U. that I have been making with respect to each witness. I would like to submit it at this time.

The Court: The same ruling.

Mr. Banfield: We would like a statement of counsel as to when he expects to rest the defense so we will have some idea when to have the instructions ready.

Mr. Andersen: We will be through at quarter of eleven.

The Court: Perhaps you should arrange now to get your rebuttal witnesses here.

Mr. Banfield: I will have to do that.

Mr. Andersen: Mr. Banfield and I, or Mr. Strayer and I discussed the matter of documents introduced in evidence. I presume the usual practices, either party may read them [966] even though not actually read at the time the witness was on the stand?

The Court: Yes.

Mr. Andersen: Your Honor seemed to be ruling that it should be done while the witness was on the stand.

The Court: That is only so far as the taking of testimony for the trial, so to speak, is concerned, but so far as exhibits, the reading of matters in evidence at the argument, it may be done.

Mr. Andersen: I just wanted to understand it.

LEONARD EVANS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. Mr. Evans, what is your full name?

A. Leonard Evans.

Q. And do you live here in Juneau?

A. Right.

Q. What is your position at the present time?

A. Territorial Representative, United States Department of Labor.

(Testimony of Leonard Evans.)

Q. How long have you held that position?

A. Since May 1, 1948.

Q. And prior to that time what was your position? [967]

A. Deputy Commissioner in the Territorial Department of Labor.

Q. How long had you held that position?

A. Since January 6, 1947.

Q. And prior to that time what had you done? Had you been in the Territory prior to that time?

A. Since approximately April 15, 1944, in the Territory, working in the United States Department of Labor as Wage and Hour Inspector.

Q. You, of course, are somewhat familiar with this dispute at the Juneau Spruce Corporation, are you not? A. I think so.

Q. Now, on or about April 10 of 1948, did you have a meeting with Mr. Hawkins?

A. The dates are not clear in my mind. It is possible that April 10, 1948, was a Sunday, so I wouldn't be exact on the day, but during the period immediately after this dispute occurred I called on Mr. Hawkins at the Company office.

Q. Did you have a conversation with Mr. Hawkins at that time? A. Oh, yes.

Q. Did you subsequently render a report, make a report regarding that discussion?

A. Yes. I was assigned as a conciliator and was to report back to Mr. Benson, Commissioner of Labor; yes. [968]

(Testimony of Leonard Evans.)

Q. Have you recently read the report—strike that. After your interview with Mr. Hawkins, did you make a report of what occurred at that meeting?

A. Yes.

Q. Have you read that recently?

A. I have reviewed it recently; however, I think it should be pointed out that—if I remember correctly —I made prior visits to the Company office either earlier or later. I made other visits to the Company office on the same matter.

Q. About how many visits did you make to the Company?

A. A combination of visits and phone calls, not less than four.

Q. Were they all in your capacity as representative of the Territorial Labor Department?

A. Yes.

Q. Do you recall your conversation with Mr. Hawkins on that day?

A. Some parts of it I recall quite well.

Q. Do you recall whether he mentioned anything or not about closing the plant at that time?

A. It was a phrase that was in general use; yes.

Q. Let me show you.

Mr. Andersen: Have you seen this before, Mr. Banfield? (Showing document to counsel for plaintiff.) [969]

Q. I will show you a copy of the report of April 10. Does that refresh your recollection?

A. Yes, except that the heading "Report of" and

(Testimony of Leonard Evans.)

so-and-so, is apparently identifying material added by someone else at a later date.

Q. Well, that isn't important.

A. That is my report.

Q. At that time, then, did Mr. Hawkins tell you that he would close the shop rather than——

Mr. Banfield: May it please the Court, we object.

Mr. Andersen: May I finish?

Q. At that time did Mr. Hawkins tell you he would close the plant rather than do business with the Longshoremen?

Mr. Banfield: We object.

The Court: It is a leading question unless the witness shows in some way that he has difficulty in remembering something.

Q. From that report, will you tell us the result of your interview—not the result, but the factual matter relating to your interview with Mr. Hawkins at that time?

Mr. Strayer: Your Honor please, if by that question counsel wants to show information in the memorandum, it relates to some matters not in the dispute.

Mr. Andersen: I will agree with that. It affects other Unions in there too, which apparently were discussed at [970] the time.

Q. But in relation to the Juneau Spruce Corporation here, from that report will you tell us what he stated in relation to the situation?

A. Well, the most important thing to me, of course——

(Testimony of Leonard Evans.)

Mr. Strayer: Just a moment. I object to that sort of an answer.

Q. You can't testify as to the most important thing to you. You testify just what was said.

A. All right. The thing first was this was a jurisdictional dispute. That was Mr. Hawkins' statement.

Q. Between whom?

A. Between the sawmill workers and the Longshoremen, and that he would not deal with the Longshoremen and that the comment had been made many times before in the plant and elsewhere that the Company would not deal with the Longshoremen and would close the plant down rather than deal with the Longshoremen. That was tied into Mr. Hawkins' statement that this was a jurisdictional dispute. I disagreed with him. He defined the jurisdictional dispute and this is part of our conversation—I think Mr. Banfield in part, previously, or in his office later —Mr. Banfield and me disagreed then and still disagree. Mr. Hawkins was using the same definition as Mr. Banfield. I was there as conciliator trying to reach any agreement. [971] The Department doesn't care who wins or loses. After their definition of jurisdictional dispute I saw it would be impossible to get the parties together.

Q. In the conversation did they define their idea of a jurisdictional dispute?

A. We each did. Jurisdictional dispute was defined in our conversation.

Q. Did Mr. Hawkins define his? A. Yes.

(Testimony of Leonard Evans.)

Q. What did he state?

A. That this was a jurisdictional dispute, defining it as one between a company and union over a division of work.

Q. Between the Company and a union?

A. Yes.

Q. In the conversation did you define a jurisdictional dispute?

A. I did, and I defined a jurisdictional dispute as a dispute between two unions over the division of work.

Q. With the employer being on the outside, so to speak?

A. With the employer not being directly involved in the controversy.

Q. Did you have any other—is that the gist of your conversation with Mr. Hawkins at that time?

A. It is the gist of the major part of it. I tried to get a meeting of the representatives of the sawmill, representatives [972] of the Company and representatives of the Longshoremen.

Q. Were you successful in getting Mr. Hawkins to agree to such a conference?

A. Either then or later I was successful in getting the three parties to meet for a very short time in the Commissioner of Labor's office.

Q. When was that?

A. If I remember right, it was a Friday afternoon.

Q. About when?

(Testimony of Leonard Evans.)

A. In the same week.

Q. Were your conciliations successful then or unsuccessful?

A. When we left I was hopeful. We had scheduled a second meeting for the following Monday. All three parties at that time indicated they would all show up. On Monday the Company representatives didn't show up. When I phoned to remind them they said "No soap—no meeting."

Q. That is, they refused to meet, did they?

A. Yes.

Q. Does this report also contain the gist of what you testified to, so far as the meeting of April 10 is concerned? A. Yes.

Mr. Andersen: I will offer it in evidence and we will delete the portions——

Mr. Strayer: I object. It is not in evidence. It is only a memorandum this witness made to refresh his memory, but it is not substantive evidence.

Mr. Andersen: Also, may it please the Court, it is an official record, a copy. They have the original in their files. It is a copy of an official record of the Territorial Department of Labor.

The Court: I think that the rule applied in a case of this kind, assuming it is admissible, being of an official character, it is not admissible except to rehabilitate or corroborate a witness who has been contradicted.

Mr. Andersen: May I offer it for identification then, your Honor?

(Testimony of Leonard Evans.)

The Court: Yes.

Mr. Andersen: For reference, more than for anything else.

Clerk of Court: The exhibit has been marked Defendant's Exhibit E for identification.

Mr. Andersen: You may cross-examine.

Cross-Examination

By Mr. Banfield:

Q. Mr. Evans, do you remember in talking to Mr. Hawkins and myself I made it perfectly clear to you that I didn't care whether you called this situation a jurisdictional dispute or not, but what it was was a dispute between [974] the Company and the I.W.A. —I mean between the Company and the I.L.W.U. Do you remember that?

A. I am sorry to say I don't, Mr. Banfield, but there may be a good reason for that. I was so disturbed by the difference of definition of jurisdictional dispute I might have missed the point of argument such as you make now.

Q. Do you remember saying that 8(b)4(D) of the Labor Relations Act only applied to a jurisdictional dispute between two labor organizations?

A. No, I have never—well, quoted the Labor Relations Act by number. I have never quoted a section of that Act by number. I have a good reason. I have never been an enforcement officer of that Act and I have never administered it, consequently I wouldn't try to quote it by number.

(Testimony of Leonard Evans.)

Q. Do you remember asking me for a copy of the charge filed with the National Labor Relations Board against the I.L.W.U., Local 16?

A. I remember.

Q. And it set forth a violation of a certain section of the Act?

A. The charge listed the facts and it listed the sections of the Act by number; yes.

Q. And you remember we discussed that particular section of [975] the Act which we claimed had been violated; do you remember that? A. Yes.

Q. And do you remember I stated this Act applied to an action by a labor organization to encourage or induce employees of an employer not to work, when done with the object of forcing the employer to assign the work to somebody else rather than the person to whom it is assigned; do you remember that?

A. I remember an argument along those lines. You see, my job was as conciliator, consequently I don't know. I am not informed and I don't pretend to be on the technical requirements of the Labor Relations Act. I could say yes and miss, because I am not familiar with it.

Q. Don't you remember you said there was just a dispute between two labor organizations contending for the same work?

A. I remember I felt that was the case, and I would make a statement along those lines, and I did.

Q. Do you remember that my position was I didn't care whether you called it a jurisdictional dis-

(Testimony of Leonard Evans.)

pute or what you called it, but it was a violation of the law as the law set it forth? You remember that, don't you? A. I believe so.

Q. Do you keep up on these labor cases and labor opinions? [976]

A. Not under this law. I keep up to date on Wage and Hour and on certain other laws, but I do not try to keep up to date on this Labor Relations Act. I have no official connection with it.

Q. Have you read the decision of the National Labor Relations Board in this particular dispute?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Is that——

Q. The decision which came out.

A. In this particular case—not in connection with this damage suit, but a question of whether or not——

Q. Yes.

A. I have read that, I believe, once.

Q. Do you remember what the opinion of the Board was?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial, may it please the Court.

The Court: Objection sustained.

Q. Has the Board adopted my viewpoint?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. Mr. Evans, hasn't the National Labor Rela-

(Testimony of Leonard Evans.)

tions Board, in that case, ruled that a jurisdictional dispute exists [977] when there is only an argument or a dispute between an employer and one labor organization?

Mr. Andersen: I am not going to object, but I assign the conduct as misconduct.

The Court: I think it is within the scope of the Court's previous ruling, and hence must be sustained.

Mr. Banfield: That is all.

Redirect Examination

By Mr. Andersen:

Q. Mr. Banfield mentioned and showed you a copy of the charge that had been filed by the Company against the Longshoremen's union. Did you also know what happened to that charge, which was discussed in your meeting with Mr. Banfield?

Mr. Banfield: I object, unless counsel wishes to open the door for the whole testimony.

The Court: Yes; objection sustained.

Mr. Andersen: May I state the reasons for it, your Honor?

The Court: Yes.

Mr. Andersen: On cross-examination they talked about a conversation that occurred there, just the conversation now. In the conversation that occurred there, Mr. Banfield apparently was talking and also asked him if in the conversation [978] he showed him a copy of the charge—I guess your Honor is probably right—wait just a minute while I read this. That is all, thank you.

Mr. Banfield: Thank you, Mr. Evans.

(Witness excused.)

Mr. Andersen: One other matter, may it please the Court. I realize your Honor previously made a ruling in relation to Exhibit C in evidence, that is, and with particular relation to Exhibit D for identification, and in relation to the testimony of Mr. Pearson. I understand your Honor has made that ruling, but as an officer of the Court, I always feel it my duty —I guess we can both recognize that occasionally even a Court can be brought back along the paths of righteousness, may it please the Court.

Mr. Strayer: If we are going to cite authorities, we also have some.

The Court: I am wondering if it isn't a situation in which the jury should be excused.

Mr. Andersen: I don't believe so.

The Court: Like an argument you might make in opposition to an objection?

Mr. Andersen: It will just take me a minute. I took the position yesterday and the jury was present, that contracts carried over from one employer to another. I, at that time, cited no authorities. At this time I cite National [979] Labor Relations Board vs. Hoppes Manufacturing Company, 170 Federal Reporter, 962-964—Federal Reporter Second—a very recent case under the Taft-Hartley Act. The Court said "The change of ownership in no way affects the obligation of the employer under the statute. 'It is the employing industry that is sought to be regulated

and brought within the corrective and remedial provisions of the Act in the interest of industrial peace' " and citing roughtly a dozen other cases, may it please the Court.

The Court: Do you contend that case is in point on the facts, or was it a dispute that had commenced under a previous ownership?

Mr. Andersen: In this case—yes, I contend it is very applicable.

The Court: In the case you cited, isn't that a case where a dispute arose under a previous ownership?

Mr. Roden: No, your Honor. The original owner of the plant had a contract with this Union. He sold out.

The Court: Was it a colorable sale or a bona fide sale?

Mr. Andersen: Bona fide, and it was stock in the corporation.

The Court: And did the purchaser assume the contractual obligation? Here there is positive evidence that the new owner—— [980]

Mr. Andersen: The new owner could not escape. The industry was regulated, not the parties.

The Court: Didn't the dispute involve industry, as distinguished from a plant like this?

Mr. Andersen: Not materially. I think the situation is exactly the same as here.

The Court: I don't mind looking at that case, but it is difficult for me to believe that in view of the testimony introduced on behalf of plaintiff, very positively to the effect that there was no intention

to assume and no assumption of a contractual obligation for the predecessor, that they could be bound nevertheless.

Mr. Roden: Your Honor, if a contract as a matter of fact exists between the Juneau Lumber Company and the Longshoremen, how could the Juneau Lumber Company cancel that contract or abrogate it without the consent of the Union without laying itself open to damages? A contract was in existence. If I make a contract with somebody and sell, and he says, "Never mind, Roden——"

The Court: Don't contracts end when one of the parties dies or sells out?

Mr. Roden: No, your Honor. There is cited in this very case where one of the parties died in this Pacific Second, or Federal Second; they tried to escape an order of the National Labor Relations Board. If it ran against the [981] partnership, or rather than the surviving partner, and it was no longer effective because my partner died, an operation of law became terminated. It was not your partnership being regulated, but your industry, both under the Wagner Act and the Taft-Hartley Act, and you could not escape a contract with a Union while a partner was alive.

The Court: It would seem to me that will involve argument at some length, because apparently your opponents don't agree with you.

Mr. Roden: I didn't agree myself.

The Court: What is the purpose of calling it to

the attention of the Court at this time—so that the matter may be set for argument?

Mr. Andersen: No, I don't intend to labor the point. I wanted to mention this case and the fact that it is the policy of the law as set forth in the Taft-Hartley Act to regulate industry or business engaged in interstate commerce. The policy of the law is to try and make certain there are no labor disputes. For instance, under the Act, as your Honor knows, if two labor unions are claiming jurisdiction——

Mr. Strayer: Pardon the interruption. If he is going to argue, I will ask for further argument.

Mr. Andersen: I was about finished.

The Court: If you were about finished—but it seems to me it should be made in the absence of the jury. [982]

Mr. Andersen: I can conclude in just a moment. In relation to the other aspects of the case, we contend in view of this authority and the Taft-Hartley Act, that any time a factual dispute is raised with respect to the issue, whether or not there is a contract, that is a matter for the jury to determine, rather than a law determination. Irrespective of the Taft-Hartley Act or Labor Management Relations Act, with particular reference to the public policy set forth in the latter Act, the purpose of the Act is to regulate, not any particular thing, but to regulate the industry. The Act isn't concerned with feelings of individuals.

The Court: I get your point.

Mr. Andersen: That is the point I wanted to make. I direct it to your Honor's attention.

The Court: My ruling yesterday on the other point that the facts show sufficient to warrant admission of the offered exhibit in the evidence is that there was not a sufficient foundation in the evidence for its production. I adhere to that ruling now. I do not think that the facts put in evidence on your behalf constitute a sufficient foundation to admit these offered exhibits in evidence, but as to the point raised now, I will have to reserve ruling until I can examine the authorities. As I understand it, so far as that particular point, its decision or ruling by the Court would not necessitate taking further testimony? [983]

Mr. Andersen: No, your Honor. Pardon me, that is not correct, as I look at it.

The Court: Why? Isn't it a pure question of law here?

Mr. Andersen: Yes, but if your Honor were to rule with us then, of course, there would be more evidence.

The Court: If it is a matter of law, why would there have to be more evidence, on what point?

Mr. Andersen: Maybe we are not talking——

The Court: I am talking about with relation to the authority.

Mr. Andersen: Exhibits C and D for identification, if the decision went in our favor——

The Court: I have already decided to adhere to my former ruling.

Mr. Andersen: Then, if you decide one I think you automatically decide the other.

The Court: No.

Mr. Andersen: Then if you decide one in our favor, I think more evidence would be necessary.

The Court? Why?

Mr. Andersen: Because the contracts would go in.

The Court: They are in.

Mr. Andersen: Then I want to interrogate witnesses regarding them, your Honor, if there is a question of law [984] pursuant to that.

The Court: If it is not necessary then we can postpone argument on that question until, say, one-thirty. If it is going to necessitate taking further evidence it seems to me the Court will be required to hear argument now in the absence of the jury.

Mr. Andersen: Whatever your Honor wishes.

The Court: It isn't what the Court wishes, it seems to me what the Court would be compelled to do.

Mr. Andersen: Precisely.

The Court: I assume counsel wish to argue the point in support of which this authority is cited?

Mr. Strayer: Yes, your Honor.

The Court: Are you ready to proceed?

Mr. Strayer: If I understand the point—I am not sure that I do. I would like to hear counsel on it.

The Court: The jury may be excused until called.

(Whereupon, the jury retired from the courtroom.)

Mr. Andersen: May I then briefly state my position?

The Court: Yes, on the second point.

Mr. Andersen: I understand, your Honor. Your Honor is only concerned at this point with the bare position of law with the carrying over of the contract. That is the question.

Mr. Strayer: That is the question that has been decided, your Honor. [985]

Mr. Andersen: No, the question the Court has not finally decided.

The Court: I have assumed heretofore there is no assumption of contractual relation and it is not binding on the plaintiff.

Mr. Andersen: Yes, your Honor. That is the point to which we address argument and that is the only point to which we address argument. In order to have a full understanding of that, may it please the Court, reference of course should be made to certain portions of the Taft-Hartley Act or Labor Management Relations Act, as it is referred to. I might add, in the case I cited, the Court indicated that under the old Act, that is, the Wagner Act or the present—this case being decided under the present Act, the Court held the rule of law to be the same. The public policy of the Taft-Hartley Act I have directed to your Honor's attention several times. It has provisions in it, for instance, that if two unions claim jurisdiction over a cer-

tain type of area of work the employer may immediately file a complaint with the Board and have an immediate certification, or rather investigation, by the Board Agent, and if the Agent makes a determination that there is a dispute between two unions, then the Board may immediately hold an election to determine who represents the workers. Not only the Act but the rules of the Board are so geared, may it please the Court, that [986] those matters can be handled with the greatest expedition to the end that there be no cessation in interstate commerce. That shows the extent to which public policy is involved in the Act. The Act has other provisions about conciliation and how parties must negotiate in good faith to the end that agreements are reached. All the way through public policy is set forth in the Act, allegedly in the relation of the public welfare, in relation to John Jones or the Spruce Corporation, or any other corporation or business, and theoretically, is it concerned with a union or person, whether that person be an individual, associate or cooperative, the Act theoretically has no interest in those things. It ill behooves a man to say "I want to hire John Jones in my lumber yards." They consider that immaterial under the law. So many man-hours go into the work and any able-bodied man can perform so much work. It is the general public policy with which we are involved, and it is so contrued, always along the lines not paying too much attention to the individual because it couldn't if it were to administer

an Act designed for general welfare. Individuals, unfortunately, fall along the line occasionally in our system, because it has long been said an individual must be subverted to the good of the whole sociological system, the good of the greatest number with which the Government is concerned. I think we can agree on that.

Many years ago under the Wagner Act there was, as I [987] recall, a shoe manufacturing company that crossed state lines, was in one state and had a contract with the Union and changed ownership, as I recall, and moved into another state, and the issue was whether the contract went with it. The Board held it did.

The Court: The contractual party was the same. One of the parties there was a party sought to be bound with the same party, was it not?

Mr. Andersen: The Board—as we look at it, the Union was the same, but the employer wasn't the same. They had completely changed their location, changed state lines.

The Court: I thought you said the employer moved?

Mr. Andersen: Over the state line, from one city to another.

The Court: Isn't he the same person?

Mr. Andersen: Certainly, but my recollection is he not only changed location but changed ownership. The other cases are all to the same point, and that is that the employing industry that is sought to be regulated is sought to be brought

within the remedial provisions of the Act. The change of ownership in no way affects the obligation of the employer under the statute. In other words, it is the policy of the Act, may it please the Court, as I see it. Here is a large corporation. The testimony is two million dollars or something like that. It employs a hundred, two [988] hundred or three hundred men; I think the figure was around two hundred and seventy-five men, if I recall, your Honor, from one of the witnesses' testimony that it was around two hundred and seventy-five men. They testified they wanted to cut fifty million feet of lumber. It seems to me a lot of lumber. Substantially, it is under interstate commerce, so here is an industry with which we are concerned and, not only this, but the whole lumber industry, so to speak. What, therefor, is the best interest of the public policy, the Board's position, the philosophy of the Board's position is this: here is a lumber company. We have to assume they operated efficiently, as matter of law. Whether they operated efficiently or inefficiently, so far as the rule of law is concerned, the mill operated with two hundred and seventy-five men working.

They talked about the Juneau Lumber having a contract with the I.W.A. They have a contract with other Unions, I assume, other Unions, ordinary workers and carpenters and so forth in the operations, and they have a contract with the I.L.W.U. The evidence is clear. They didn't even tell the I.L.W.U. they were cancelling any contract. All

they did was in a contract between themselves, that is, the two corporations, agreed they wouldn't carry over any contracts. That is all they agreed to. That could even be construed—but I don't make the point—it could mean a pecuniary or [989] monetary obligation. We don't necessarily make that point at this time, but whether this type of contract is that type of contract—if there is a distinction between contract and agreement, simply agreements relating to hours of work and rates of pay, that is all they ever had in them—it simply means under this collective bargaining idea that a pool of labor is made available to the employer from which he can draw as the business or industry desires. It is the public policy of the Act that that reservoir shall be created and maintained for the benefit of the industry.

That is the case. As I understand them to say it is against public policy to interrupt those relations, because the Board assumes—and there is no evidence here to the contrary—the Board here assumes those relationships are created by this agreement to which I refer for the interest and for the benefit not only for the particular industry involved, but for the public good or welfare as a whole. The evidence here in this case is absolutely void of any showing that the relationship between the Juneau Lumber or Juneau Spruce and Local 16 wasn't a profitable one for each but both of them.

Mr. Schmidt wasn't asked any questions on the

point, so it must be assumed all their relations were satisfactory. It is certain that for at least ten years the Juneau Lumber got all their longshore work from the Longshoremen. There is no question about that at all. Mr. Schmidt's testimony was [990] he carried on thereafter in the same way with the Longshoremen without telling them a word, hired them in the same way, paid in the same way, gave them a raise in the same way. It is not all a part of Mr. Schmidt's testimony, but it is the same thing. What is public policy on things like that? Does it mean every time there is a change of ownership or a partner dies that there is a sale of part or all? The employer stays the same; the only thing that happened, it was improved. The mill Manager remained the same person, the principal Manager, Mr. Schmidt, because Mr. Hawkins testified he was away at least half the time. The man who did the hiring remained the same, and supervised the work—he remained the same. I can't conceive a policy of the United States, as expressed in the Taft-Hartley Act, that under such circumstances a sale could be made by one corporation to another and thereby cut off contractual relations existing for ten years in the interest of industry and the country, without one bit of evidence between the employer and employee that they have not contributed to the interest of the United States, so when it came up in this particular case under substantially the same conditions, may it please the Court, the Court said, "It is the employing industry that is sought to be regulated

and brought within the corrective and remedial provisions of the Act, in the interest of industrial peace." "The change of ownership in no way affects the obligation of the employer" [991] and, of course, speaking of the new employer, "In no way affects the obligation of the employer under the statute." The facts were somewhat like this, may it please the Court—I will read the syllabus—it is something like this: there was a business and there was a complete change in the ownership of the business, complete new policy, complete new everything, and a new outfit came in and decided they weren't going to do business with the Union, they were going to close their plant. That is the language in the case. The National Labor Relations Board Examiner made a complete finding. They were going to close the plant before they would do business with the Union. They didn't even know that there was a contract with the Union, that the plant had made a contract. They weren't even aware of the fact that a contract had been made when they bought this business.

The Court said it didn't make any difference whether you knew or not, what we are interested in is freedom from industrial strife. You had your contract, had your agreement; therefore, it carries over until it is cancelled with the consent of the parties. That is, in effect, what the case holds, may it please the Court, so I respectfully submit to your Honor that is not only the clear statement of pub-

lic policy as set forth in the Act itself, and as I argued the other day on the motion to dismiss, I thought your Honor was at first impressed with my argument there, because I think [992] that argument, plus this argument, plus these cases, merely show what the policy of the United States is with relation to keeping industry in operation. The undisputed evidence is that after it was taken over it was carried on just as before, without any difference at all, and then the Longshoremen heard that they were loading sea-going barges, so they went down there to talk to them about it; in other words, it was a grievance, as the term is used in labor relations. They said, "We would like to talk to you about loading this lumber." Mr. Hawkins, who was in charge, according to all the evidence, said, "I refuse to negotiate. I will close the plant before I do business with the Longshoremen. I have nothing to talk to you about." All those phrases were used, as far as Mr. Hawkins is concerned; as a matter of fact—and again I am addresing myself to the same point—whereas, as a matter of fact, there was no reason under the Act why he didn't simply say to the Longshoremen, "O.K., I will sit down and negotiate the question with you." There was no reason why they couldn't come together and file a petition. Your Honor will recall there was no dispute at that time. The only dispute —possibly I am anticipating a point that has been mentioned here from time to time about interfering with the right of the Company to hire a man whom

he may want to hire—that is in issue here, that is completely foreign under the Act. Certainly under the Act the employer may hire men who don't belong to a Union. [993] Certainly that is true; there is no question about that. What this whole idea of an employer entering into a contract with a man for a dollar a day, common sense and legislation—certainly an employer has a right to hire, but we must make a distinction. The question here was whether the Longshoremen were pursuant to their contract, custom and practice, had a right to go in there and negotiate for this work, particularly when the I.W.A. said they didn't want it, so again we come up against this, flush with this, as I have said, if this case—and it has not been overruled—how can management say, "We bought this plant that the other one carried on for years. We didn't advise you the contract was terminated after May 1." They gave raises and carried on as before. Such is the evidence, and they then say finally they wouldn't even negotiate.

The law, as I see it in the light of public policy and light of these cases, is a matter of law. The contract carried over.

I will not argue the other matter the Court indicated he ruled on.

Mr. Roden: We probably have never sufficiently appreciated what the policy of the Taft-Hartley Act, or for that matter, the Wagner Act, has been. I am frank to say I never did, until I ran across some of these cases.

The Court: Is this the latest case on that? [994]

Mr. Roden: Yes; November. I think November 28.

Mr. Andersen: The twenty-eighth of November last year.

Mr. Roden: Terminating a contract only if for value of services which could only be performed by the person whose death has occurred, if an ordinary contract for construction of building, no doubt his estate would be required to carry out the contract. As I said a moment ago, the Court holds —yes, your argument is right when this partner died, under the common law rule, that partnership was dissolved, but that is no longer applicable, since the Taft-Hartley Act, or the established public policy in which the public principally is interested and not the two parties concerned. That is what I believe.

The Court: You mean public interest overrides?

Mr. Roden: The private interest.

The Court: And also it would follow from your argument that it would override certain principles of law that were looked on as fairly well established.

Mr. Roden: I didn't hear the last, your Honor.

The Court: I say, it would also follow that the public interest would override certain principles of law that would appear to be somewhat well established before.

Mr. Andersen: Just that the Wagner Act made employers bargain, which absolutely conforms to the common law. [995]

The Court: But your argument now is a statutory provision instead of, you might say, the policy or something like the public interest implicit in the Act.

Mr. Andersen: We are arguing that the public interest is implicit in the Act.

The Court: But it is subject to statutory provision, and I don't think the comparison is very apt.

Mr. Andersen: I don't follow your Honor.

The Court: In one case, if there is a provision of the statute dealing with the point, you don't have to rely on implication from public policy or interest. You are in a better position, aren't you?

Mr. Andersen: Under the Taft-Hartley Act we have a statute which itself appraises public policy of the United States in relation to all things that are brought within its purview.

The Court: I understand.

Mr. Andersen: The Act says—it repealed the Clayton Act——

The Court: I understand all that, but you can't point to a specific provision repealing some law providing that a contractual relation shall not be forced on him. There is a difference. In one case we might rely on specific statutory provisions, and in the other case we don't have it. Have you anything? [996]

Mr. Banfield: We would like to point out that counsel avoided telling how the transfer took place, or if it was the same organization. I think the Court would like to see it, and we would.

The Court: How is the Court going to see it if you also want to see it?

Mr. Roden: The case is short.

The Court: Do I interpret the remarks of counsel now as desiring a recess?

Mr. Banfield: Yes.

Mr. Strayer: We just want time to look at it.

The Court: How much of a recess?

Mr. Banfield: We can read it out loud.

The Court: How much recess do you wish?

Mr. Banfield: We don't care for any. We can read the case.

Mr. Roden: I think we should refer to the authority to get the idea.

The Court: If you have to look at other authority, probably you will need a recess.

Mr. Banfield: If it is not in point, "In this case the National Labor Relations Board asks for enforcement of its order finding respondent had restrained and coerced its employees in violation of Section 7 of the National Labor Relations Act, and had refused to bargain collectively as required by [997] Section 8(5) of the same statute, 29 U.S. Code, Section 157 and 158.

"The case presents primarily a question of fact. It arises out of the following circumstances, which for the most part are not controverted.

"The controlling interest in respondent"—that is the Hoppes Manufacturing Company—"Was owned by John W. Hoppes, who prior to his death in 1945 was heavily indebted to a local bank. In order partly

to protect the bank's loan, H. E. Freeman, president of the bank, and B. A. Mayer, president of the Bundy Incubator Company, and also director of the bank, on August 27, 1945, purchased the entire block of Hoppes's stock." I imagine Hoppes Manufacturing Company is a corporation. I haven't found where it says so. "Mayer's principal interest in the matter was to acquire the plant building as a storehouse for the Bundy Incubator Company. Freeman and Mayer intended at first to close the business, but later, at the intercession of Forrest R. White, general manager of the respondent, they decided to operate it experimentally for about a year. The business had never paid dividends; it had broken even since 1941.

"The plant, which makes feed water heaters, at the time employed eleven men. Shortly before Freeman and Mayer purchased the stock, a consent election had been held at which the U.A.W.—C.I.O. had been chosen as bargaining representative, [998] but Freeman and Mayer were not aware of this circumstance until about a week after they started to operate the business.

"The new set-up was not particularly well organized. Freeman had nothing to do with the management, which he left to Mayer and White. He said frankly to one of the United States conciliators that he was 'thoroughly indifferent to the operation of the plant' other than his natural reluctance to drop some men where they had worked for many years."

If the Court please, I don't believe I need go on. It simply shows the corporation owned the plant and

some bank directors decided to buy some stock and the entity went right on. Isn't that the case?

Mr. Andersen: Your treatment of it isn't novel. I suggest you read it all.

Mr. Banfield: All right. "Mayer was absent during some four weeks of the critical phase of the controversy. He had rented a quarter of the plant building for warehouse space and thus had attained his main purpose in buying a share in the business. While Mayer primarily represented the owners in the management, he gave no instructions to White as to how to deal with the union and, due to his absence from the city, he at no time met with the United States conciliator.

"The Board found that shortly after Freeman and Mayer took over the business, statements were made by both the superintendent and the manager to the effect that the plant would [999] be closed if the union came in. This finding is conclusively supported by the record. The factory superintendent told two of the men that there had been a change of ownership and that 'as far as the Union was concerned, it wouldn't tolerate it. . . .' He further said that if the employees would not give up the union he would have to close the plant.

"Richardson, an employee, testified that White, the manager, told the men in a general meeting that 'the place had changed hands, and that he thought that Mr. Mayer would be a man that would be glad to meet us all squarely, and told us at that time he didn't think that the Union would be a necessary thing for

the employees there at the plant, and he did say, too, that Mr. Mayer would not have the Union in the plant.' In answer to a question as to what would happen if the employees persisted in their desire to have a union, White said the company 'would have to close it down'."

First point of law, "The respondent does not seriously controvert these statements, but points out that the company had never operated at a profit, contends that it was the right of Mayer and Freeman to discontinue operations at any time, and that the declaration that the plant would be closed therefore did not constitute an unfair labor practice. But the statements quoted were more than a mere notice of discontinuance due to financial failure. They constituted a threat to discontinue unless the union was dispensed with, [1000] and this was clearly coercive under the statute." In other words, an interference with a man's right to join or not join a union.

Second point of law, "While Freeman and Mayer were confronted with an unexpected situation and they personally did not oppose the union, they authorized White to represent them in the negotiations with the union, and they are bound by his acts. The change of ownership in no way affects the obligation of the employer under the statute. 'It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace.'" Then there are some cases cited.

Third point of law, "As to the refusal to bargain,

a similar conclusion is required. At the one meeting between the union representatives and White on June 7, 1946, White listened in silence to the reading of the proposed contract which had already been delivered to him, until the section dealing with wages was reached. He then declared in effect that no increase in wages was possible and that if that was the principal issue, the negotiations might as well close."

The Court: I don't think those matters you are now reading are of any materiality here. I think the question is whether there was a change of ownership or merely a change of ownership of stock. What about those other cases cited, have [1001] counsel examined them?

Mr. Andersen: Your Honor, this case doesn't treat change of stock at all. The case talks about change of ownership.

The Court: But what it was was the ownership of stock, wasn't it? It would be merely dictum.

Mr. Andersen: Your Honor, maybe it is dictum.

The Court: That is the use of the words "change of ownership" where you are dealing with nothing but ownership of stock.

Mr. Andersen: It would have been idle for this if the Court was only concerned with the change of stock in a corporation, then the Court would have said that the employer remains the same. The fact that stock might remain the same—I am sure your Honor will agree with that. Instead of that, the Court cites all the cases and says it is not concerned with the change of ownerships, simply the industry.

The Court: Courts have always made general statements, not full import, without regard to the facts. The facts in this case show a change of ownership.

Mr. Andersen: It doesn't have four white paws and a star in the middle of its forehead. I have never been able to find that sort of case.

Mr. Roden: First of all, may it please the Court, the change of ownership shown in this case, if there was [1002] ninety nine per cent of the stock sold, what difference does it make whether there is a deed to the property or whether he assigns stock to them. This little fiction that a corporation is one entity and the man who holds all the stock in it is another entity is of very little importance at any time. The question is, what is the actual situation? If I hold the stock in the corporation I am the owner of assets.

The Court: But here it was a new organization. It wasn't the old one. It was a new one. It was not merely a sale of stock.

Mr. Roden: All right. The quotation here is that a transfer of ownership is of no consequence. It is a liberal interpretation of a former decision in the previous authorities here.

The Court: Have you examined the other authorities?

Mr. Roden: I have. 87 Federal Second.

Mr. Strayer: Which case is that?

Mr. Roden: 87 Federal Second, I think is here used for the first time.

The Court: But was there a complete change of

ownership, or merely a change of ownership of stock?

Mr. Roden: I cannot answer that question correctly, your Honor.

The Court: It still looks like we will have to take a recess to examine these authorities, because counsel disagree [1003] to their effect.

Mr. Roden: I think this is significant at the end, "Whether the case be considered as governed by the original National Labor Relations Act of 1935, or by the Labor Management Relations Act, enacted June 23, 1947, the conclusion is the same. Under either statute there is ample support for the findings of the Board." It all comes back to the Wagner Act and the Taft-Hartley Act here in the interest of the public and not to create, so to speak, any rights in an employer or in an employee which are superior to the rights of the public.

Mr. Andersen: We have one other matter. Advance Sheets 172 Federal Second, it would be the same volume.

The Court: You say 170?

Mr. Andersen: 172, your Honor. In this case there was a corporation——

Mr. Strayer: Might I have the page number?

Mr. Andersen: 459. In this case there was a corporation. The men split up, and one formed a partnership with his wife, left the corporation and formed a new entity.

The Court: He just took on a different name.

Mr. Paul: He went into——

Mr. Andersen: He left the corporation and

formed a partnership with his wife. The labor contracts had been in existence. This doesn't have four white legs with a star on [1004] its forehead, but subsequently unfair labor practices arose.

The Court: Did he leave the plant, or just the corporation?

Mr. Andersen: He left the plant and the corporation.

The Court: And set up his own plant?

Mr. Andersen: He apparently bought, as a partner—he split away from the corporation, this corporation had several plants. He left the corporation completely—he and his wife bought one of the plants and he operated separately and apart from the corporation with his wife. Those are the facts.

The Court: Was it found to be a subterfuge?

Mr. Andersen: No, your Honor, there was no question about that. The way the question came up, there was nothing in here at all about subterfuge. I am willing to argue the point if it will do me any good.

The Court: I haven't indicated you shouldn't argue. I am giving you an opportunity to argue.

Mr. Andersen: Labor disputes arose apparently with respect to both. The partnership said it had nothing to do with the corporation. Charges were filed against the corporation of unfair labor practice, and also arose with respect to this new partnership, and the objection came before the Board on the consolidation of them both for hearing, and that is the question that came up before the Court on enforce-

ment [1005] and the Court just disposes of the question just formally.

The Court: What did it hold?

Mr. Andersen: It joined both despite their entities and here——

The Court: If it joined both it must be on some ground. What was the ground?

Mr. Andersen: I will read the syllabus. "Proceedings on charges of unfair labor practices against corporation and against partnership which was alleged to be partial successor to corporation were properly consolidated before Trial Examiner of National Labor Relations Board." That is the only important aspect of it. It bought the plant. It was a partial successor. It bought one of the plants and the partnership carried on the same type of business. It bought from the corporation. It was a partial successor; nevertheless, it is bound by the same contract.

That again shows the public policy with which we are here concerned. I again tell your Honor I don't know of a case off hand that is four square. This again sets forth the public policy. Here is a clothing manufacturing business, a corporation. One man pulls out from the management of the corporation—he may have remained one of the stockholders, but that is immaterial, according to Mr. Banfield—he pulls out and forms a partnership with his wife in the same business, and is held by a contract of the former corporation. Public [1006] policy which says two people engaged in interstate commerce who have to continue peaceful labor relations can't get out by

selling to another corporation, or, like your Honor said, by subterfuge, but there is none here.

The Court: Except one of the former owners continued under the old name. Here Mr. Rutherford——

Mr. Andersen: Mr. Schmidt continued. He was the same man.

The Court: One particular corporation, particularly a large one, if it changes hands and undergoes a change, someone always remains, but that doesn't give it the character of being the same. We will take a recess for fifteen minutes to allow counsel to examine the authorities.

Whereupon Court recessed for fifteen minutes, reconvening as per recess with all parties present as heretofore and eleven of the twelve jurors all present in the box; whereupon the trial proceeded as follows:

Clerk of Court: The jury is present, with the exception of one.

The Court: Have the defendants any other witnesses to put on?

Mr. Andersen: Not this morning.

The Court: Any time?

Mr. Andersen: We are awaiting your Honor's ruling.

The Court: Ladies and gentlemen of the jury, you [1007] are excused until two o'clock.

Mr. Banfield: We have one rebuttal witness out of order that would take about five minutes.

Mr. Andersen: One of the jurors is missing. I understand the juror—I heard someone mention the juror was under the impression he was excused and went home.

Whereupon the absent juror entered the jury box.

The Court: Mr. McKenzie, no juror can afford to pay a fine out of his pay as a juror. You should not be late if you can help it. I was going to excuse the jury because I thought you wanted to be heard.

Mr. Andersen: Mr. Banfield said he had a witness out of order.

Mr. Banfield: It would only take about five minutes. The witness would like to leave this afternoon.

The Court: Very well.

EUGENE S. HAWKINS

called as a rebuttal witness on behalf of the plaintiff, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Mr. Hawkins, how many meetings have you had with Mr. Peterson?

A. Just one, I believe.

Q. When was that meeting? [1008]

A. April 9.

Q. Are you sure it was the day before the picket line was established? A. Yes.

Q. Was there a meeting on the evening of the seventh of April or eighth of April which Mr. Peterson and certain members of the I.W.A. and I.L.W.U. were present? A. No.

Q. Did you ever have any meetings in the evening about eight o'clock, or at any time after six o'clock with the members or committee of the

(Testimony of Eugene S. Hawkins.)

I.W.A. and committee of the I.L.W.U.?

A. No; not both together.

Q. Now what evening meetings did you have?

A. I had one evening meeting with the I.W.A. in October, 1947.

Q. In October, 1947. Was Mr. Peterson there?

A. Yes.

Q. And now, at that meeting was there anything said about you knowing the answers, some such phrase as that? Do you remember some such thing being said?

Mr. Andersen: What meeting are you talking about?

Q. The meeting in October, 1947.

A. Yes. As that meeting broke up the statement was made by Mr. Card in reply to a statement made by Mr. Peterson, I believe, that Mr. Card stated he also knew some of the [1009] answers to labor problems.

Q. Mr. Hawkins, let me refresh your memory. In October, 1947, Mr. Card arrived here and you had two meetings that day, did you not?

A. Yes.

Q. When was the first meeting?

A. About two in the afternoon.

Q. And who was there?

A. The representatives of the I.L.W.U.

Q. Was the I.W.A. there?

A. Not in the afternoon.

Q. Was that the time that the I.L.W.U. asked Mr. Card for a contract? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. And was there anything said at that meeting of the afternoon of October 29 by any of these Longshoremen regarding "We know the answers." Did anyone make that statement?

A. That statement was made several times, and it is confusing to remember just——

Q. But who made the statement?

A. Mr. Card made the statement, that is——

Q. How did he happen to make this statement?

A. Upon leaving—I just can't quote the words they did say.

Q. Was there any such a meeting on October 7 or 8?

Mr. Andersen: You are talking about October 7 and 8? [1010]

Q. Yes. With Mr. Peterson? A. No.

Q. How many meetings were there between April 1 and the time the picket line went on, with I.W.A. representatives?

A. I believe just one.

Q. And that was on what date?

A. The ninth.

Q. Was the I.L.W.U. present? A. Yes.

Q. Was there anything said at that time regarding anyone knowing what all the answers were?

A. No. There wasn't much discussion there, just a few words.

Q. Was there anything said at that time about closing down the mill?

A. On their part, they were to put the picket

(Testimony of Eugene S. Hawkins.)

line up and the I.W.A. was not going through it, but we had no intention of closing the mill, other than being forced to.

Mr. Banfield: That is all.

Cross-Examination

By Mr. Andersen:

Q. Just a few questions. You say the meeting was on April 9 instead of April 7? You did have a meeting at which Mr. Peterson was present, didn't you, in the first part of April? [1011]

A. I don't recall no meeting the first part of April.

Q. I beg your pardon?

A. I don't recall one on the first.

Q. Both the seventh and the ninth are in the first part of April?

A. I meant prior to the ninth of April.

Q. Do you recall a meeting on the seventh?

A. No.

Q. The meeting you referred to is a meeting before the picket line went up, is that correct?

A. Yes.

Q. Is that the meeting where some Longshoremen were present; that is, a committee of Local 16 and a committee from I.W.A. came and said that I.W.A. had passed a resolution for the Longshoremen to do the work and they wanted you to turn the work over to the Longshoremen? Was that the meeting?

(Testimony of Eugene S. Hawkins.)

A. As I recall, that wasn't the wording of what transpired.

Q. But substantially—I don't want to hold you down to the exact words? A. Yes.

Q. That was substantially what was said?

A. Yes.

Q. The Longshoremen said in this meeting, said that they had done the work for the Juneau Lumber Mill, that they had a [1012] contract with the Juneau Lumber Mill, and wanted to negotiate with you now for this new work that you were doing about these barges? Was it substantially that?

A. I don't know. At that meeting there was very little said, and they made the statement if I didn't agree after this to negotiate that the next day there would be a picket line put up.

Q. They wanted you to negotiate and you wouldn't negotiate? They said if you didn't negotiate they would put up a picket line?

A. Yes.

Q. And you said you wouldn't negotiate?

A. Yes.

Q. Wasn't there something said at that meeting that they had done all the longshoring for Juneau Lumber and were also hired by Juneau Spruce to do longshoring work, wasn't there something like that said, too?

The Court: This seems to be going into the whole thing.

Mr. Andersen: Counsel went into this conversation. I am going into conversation.

(Testimony of Eugene S. Hawkins.)

The Court: But only for the purpose of attempted refutation of some statement by one of your witnesses or attributed to this witness by one of your witnesses.

Mr. Andersen: There is no objection. [1013]

The Court: No, but the Court has got to try to expedite the trial, too. It looks now like we might not finish this week. I rule it is improper cross-examination to go into anything not gone into on direct examination.

Mr. Andersen: That cuts me off, your Honor.

The Court: If that is the effect—it is intended to preclude you from going into something gone into by this witness the first time he was on the stand.

Mr. Andersen: That is all.

Mr. Banfield: That is all.

(Witness excused.)

The Court: Ladies and gentlemen of the jury, you may now be excused until two o'clock.

(Whereupon the jury retired from the courtroom.)

Mr. Banfield: May it please the Court, I have examined some of the cases cited by counsel and which are cited in Volume 170 and Mr. Strayer has also examined some. One of the cases referred to there is a case of National Labor Relations Board vs. Blair Quarries, Inc. That is where a company called "Granite" operated to 1944 when it leased

it to Blair. The Court, in discussing the issues, stated that there had been unfair labor practices which had been committed by Granite, the first operator, and that the superintendent of the Blair had performed certain unfair labor practices while being employed by Granite and that those practices continued after [1014] Blair took over and were committed by Blair while the superintendent was in Blair's employment. The Court says you can best understand the nature of the unfair labor practice through threatening and coercing the employees by understanding the whole practice. Granite, in fact, pleaded guilty, paid back pay and made certain amends which resulted in the Board discharging the charge against Granite, but Blair committed the same acts and was employing the same people.

The Court: There was no change of ownership?

Mr. Banfield: There was a lease by Granite to Blair. There was a new operator, but Blair is not charged as a result of any contract. It deals entirely with unfair labor practices threatening employees and no contracts, and it is only consolidated for hearing. One charge was dismissed. There was a charged against the subsequent owner after the lease was put in effect.

The other case is National Labor Relations Board vs. Baldwin Locomotive Works. In that case Baldwin Locomotive Works was under a debt to the Federal Government which put it in bankruptcy because it didn't pay an R.F.C. loan, but permitted

Baldwin Locomotive Works, as debtor in possession, to continue to operate these properties for the account of the bankrupt estate, then as they were discharged from bankruptcy, Baldwin Locomotive Works continued on in the possession of the property as the sole owner, and the Government had no further [1015] interest in the matter. There had been unfair labor practices committed by Baldwin Locomotive Works during the bankruptcy and continued on into the period that Baldwin Locomotive Works owned it. The Court said that Baldwin Locomotive Works was the operator of the property at all times and that Baldwin Locomotive Works was liable for its unfair labor practices to begin with and afterwards. It was the same, identical person who committed the acts. It says the fact that the United States had an interest in it under the bankruptcy law didn't make the operator come under that.

Mr. Strayer: Where there has been any holding, your Honor, that my ability can be vested upon a successor, it has been based either on subterfuge to avoid a Court order or common identity, passing from first to second or something of that kind. That is true. The case in 170 Federal is obviously of that type, because there was a passage of stock from the corporation and the corporation as an entity carried right on into the second operation. In the Adel Clay Products Company cited in the 170 Federal Second case, the original stockholders who had bargaining contracts when they dissolved,

broke up the corporation and formed a partnership—each of them were in that and were precisely the same and in the same proportion as in the former corporation. You can trace the identity. The Baldwin Locomotive Works was on a void Court order, 172 Federal Second is actually an authority for us instead of counsel. It is a case where originally it was a corporation and the president withdrew and sold his stock and formed a partnership with his wife in a business. The charge by the Board was against the corporation and partnership on the theory there was a continuing relationship. Of the operation, the Trial Examiner found no continuing relationship. It was contended it was error to join them in the same proceeding before the Board. That is a procedural matter and all the Court said was it was not proper. If there had been a continuing relationship there, it would have been entirely proper to hold them in the same proceeding. I think it is most significant and persuasive. All cases counsel cited are cases in which Federal Courts have sustained the continuing relationhip or common identity and the most recent is the National Labor Relations Board charges presumed to be rendered in this very dispute here. That was considered by the Board here and virtually the same facts were offered in evidence in this case.

The National Labor Relations Board held, as your Honor undoubtedly knows, that there was no obligation binding on the Juneau Spruce Corporation.

The Court: I haven't had a chance to read that yet.

Mr. Strayer: The pertinent part is on page 8.

The Court: Was the same point made there?

Mr. Strayer: The same point was made there. "It is [1017] well established that the purchaser of physical assets of a business may not be held to have assumed existing contract obligations to a Union in the absence of a showing of acceptance of such liability. Moreover, there is no contention that the contract for the disposition of the physical assets of the Juneau Lumber Mills, Inc., was not bona fide, or that there was any common identity between the purchaser and the seller. We find, therefore, that the Company did not assume the agreements to which Juneau Lumber Mills., Inc., was a party signatory, nor the contractual relations thereunder."

Mr. Andersen: I would like to mention that involved in the case, of course, obviously there is a change of custodian by the usual trustee in bankruptcy and supplementing the ownership of the corporation.

The Court: What case are you speaking of?

Mr. Andersen: The one Mr. Banfield referred to, your Honor, the Locomotive case.

The Court: The Court adheres to its prior ruling.

(Whereupon Court was recessed until two o'clock p.m. May 11, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: The defense rests, your Honor.

The Court: Do you have any rebuttal?

Mr. Banfield: One rebuttal witness. [1018]

PLAINTIFF'S REBUTTAL

ROBERT M. DRUXMAN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name, please?

A. Robert M. Druxman.

Q. Where do you live, Mr. Druxman?

A. Juneau.

Q. What was your occupation in 1948?

A. Newspaper reporter for the "Alaska Daily Empire."

Q. Did you have any interviews with Mr. Verne Albright during 1948?

A. On several occasions.

Q. At his or your request.

A. Usually at my request, though on a couple of occasions he did say he had something he thought might be of interest to me.

Q. Did Mr. Albright ever give you anything of particular interest to you?

A. Yes. On either July 5 or 6, 1948, he gave me a copy of a resolution passed by the Juneau C.I.O. Union Council.

(Testimony of Robert M. Druxman.)

Q. Did he make any request at that time, or did you?

A. Well, it is customary when a reporter receives something like that to be used as material in a newspaper story, and [1019] I asked him if he had any objection to my publishing it—he said "No." He handed it to me and said I could keep it.

Q. Did he hand it to you or did you ask for it?

A. I believe that——

Q. Unless you are quite certain, you don't need to answer.

A. On two occasions I was in his hotel room, one of them I met him on the street and the other time he phoned me up and asked me to come down there. I am not sure which it was, but the result was this resolution had been passed and he suggested I would be interested in seeing it.

Q. He suggested you would be interested in seeing it? A. That is right.

Q. And afterwards handed it to you?

A. That is right.

Q. I will hand you Exhibit 23 and ask you if that is the document he gave you at that time?

A. Yes, that is the document.

Q. Did he know you were going to publish it in the newspaper? A. Yes.

Mr. Andersen: I object to that as a conclusion of the witness.

The Court: If he knows——

A. Yes.

(Testimony of Robert M. Druxman.)

Q. And did you write an article about it? [1020]

A. Yes.

Cross-Examination

By Mr. Andersen:

Q. What was the date?

A. The article was published?

Q. Yes. A. July 6, 1948.

Q. As a newspaper reporter you are always seeking items of general interest to the public?

A. Yes.

Q. You heard about this resolution being passed from some source?

A. From Mr. Albright.

Q. It was of general interest and you wanted to publish it in your paper. He had one and you published it in your paper?

A. That is it, more or less.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: We rest, your Honor.

(Witness excused.)

The Court: You may proceed with the opening argument.

Mr. Strayer: Your Honor, we will have some requested instructions to tender, and also we have a motion to make at [1021] this time.

The Court: In the absence of the jury, you mean?

Mr. Strayer: Yes, your Honor.

The Court: The jury may retire until called.

(Whereupon the jury retired from the courtroom.)

Mr. Strayer: It just occurred to me I might be premature in saying in the absence of the jury, a motion for a directed verdict in favor of the plaintiff in this case. Is that the practice, to do it in the absence or presence of the jury?

The Court: In the absence of the jury.

Mr. Strayer: Plaintiff moves the Court to direct the jury to return a verdict for plaintiff and against defendant in such amount of damages sustained by plaintiff as the result of the strike at the plant. I may say to the Court, Mr. Banfield and I are uncertain under Alaska procedure whether it is necessary to make this point in order to save a legal point we wish to save. The fact that uncontradicted the evidence has proven we are entitled to damages, the only uncertainty is the amount of damages, and that is the purpose of our motion at this time.

The Court: Do you wish to say anything?

Mr. Andersen: We think the record speaks for itself, your Honor.

Mr. Strayer: May I add one thing? We are specifically [1022] moving for a directed verdict as to each of the defendants.

The Court: Well, I think there are certain questions of facts, such as, for instance, the scope of the officers or agents, the scope of their employment, which must go to the jury. Call the jury.

Mr. Strayer: Is an exception necessary?

Mr. Banfield: The statute states yes. Under our

present rules I think that has been dispensed with.

The Court: I think on a decision of the Court on any matter of law, it is unnecessary to take an exception, but of course they often do.

Mr. Andersen: We proceeded on the same assumption, that it was not necessary.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: You may proceed.

(Whereupon, Norman Banfield, of attorneys for plaintiff, made the opening argument to the jury in behalf of the plaintiff and thereafter, George R. Andersen, of attorneys for defendants, made the opening argument to the jury in behalf of the defendants.)

(Thereupon, the jury was duly admonished and Court adjourned until ten o'clock a.m., May 12, 1949, reconvening as per adjournment, with all parties present as heretofore [1023] and the jury all present in the box.)

(Whereupon, Henry Roden, of attorneys for defendants, made the closing argument to the jury in behalf of the defendants; and thereafter, Manley B. Strayer, of attorneys for plaintiff, commenced the closing argument to the jury in behalf of the plaintiff.)

(Thereupon, the jury was duly admonished and Court recessed until two o'clock p.m., May 12, 1949, reconvening as per recess, with all

parties present as heretofore and the jury all present in the box; whereupon Manley B. Strayer, of attorneys for plaintiff, concluded the closing argument to the jury in behalf of the plantiff.)

(Thereupon, Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon respective counsel were furnishd copies of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury.)

The Court: Ladies and gentlemen of the jury, you may now retire until called.

(Whereupon, the jury retired from the courtroom.)

The Court: Do counsel wish to take exception? They may do so now.

Mr. Andersen: I think the record should show that counsel stipulated.

The Court: The record may show, if it doesn't already, [1024] that the jury is absent.

Mr. Andersen: And may it be stipulated that the exceptions may be made in the jury's absence?

Mr. Strayer: Yes.

Mr. Banfield: I am not sure now that in taking exceptions the reason must be stated.

The Court: Yes, you must state the reason.

Mr. Banfield: We wish to except to the Court's refusal to give plaintiff's instruction 3A, requested

by instruction 3A by the plaintiff, because we feel it would be prejudicial to plaintiff's case to not have that fact known to the jury.

The Court: I don't think it is the jury's concern. It is like punishment in a criminal case.

Mr. Banfield: And if the Court please, the definitions in plaintiff's requested instructions 4 and 5, and Court didn't give instruction 4.

The Court: That is not necessary. That is undisputed.

Mr. Banfield: We wish to except to the failure of the Court to give plaintiff's requested instruction No. 9, for the reason that we believe the jury should know what "ratification" means in order to fully determine the issues in this case.

The Court: But there is no evidence upon which an [1025] instruction of that kind could be predicated, and it would be an abstract instruction, as I see it. There was no evidence.

Mr. Strayer: I think there was circumstantial evidence of ratification. The newspaper article is the evidence that the International, for example, ratified the activities of Local 16 up here, or rather ratified the activities of Mr. Albright up here and, of course, with regard to the Local, if your Honor please, the fact that the picket line was maintained was ratification of the activities of the Local in making demand for the work.

The Court: So far as the article to which you refer, I doubt if that would sufficiently be ratification, but so far as the picket line is concerned,

ratification could perhaps be implied from that, but it is so notorious, it seems to me.

Mr. Andersen: I think the term "ratification" could only apply to the Local. So far as the International was concerned, the testimony was that the Local put them there.

Mr. Strayer: I think your Honor is correct on that.

Mr. Banfield: Plaintiff wishes to take exception to the Court's failure to give plaintiff's requested instruction No. 12, because particularly it contains the element of what constitutes a breach of duty, and the factor of attaching responsibility, regardless of whether he has knowledge of the act or not.

The Court: That is covered, and, of course——

Mr. Banfield: I haven't been able to find it.

The Court: And the Court should avoid repetition or emphasis on any point.

Mr. Strayer: Which instruction is that included in, your Honor?

The Court: It is the latter half of Instruction No. 6 that covers it.

Mr. Banfield: On page 9 or 10, your Honor?

The Court: Nine, the latter half.

Mr. Strayer: I think your Honor's Instruction No. 6 is predicated on theory that two parties have knowingly entered into a conspiracy to commit an unlawful act. What we wanted to raise in the requested instruction was that if the participant International entered into an agreement to commit a particular act to bring about a particular result,

and even though he did not know that the result is an unlawful one, nevertheless if there was any active participation by himself, then he is liable. It seems to us that is not covered by No. 6.

The Court: Well, do you think the evidence—that there is any basis in the evidence, or something like that?

Mr. Strayer: Of course, the International has taken the position all the way through that it had nothing to do with the strike, and did not have knowledge of the Local's doing or what was going on up here. It seems to me the newspaper [1027] article is some evidence that the International did know what was going on and steps were taken, although they might have thought that the strike was legal. Mr. Banfield points out that the same thing would apply to both the International and the Local, the fact they thought the strike was legal, even though they did something in active participation.

The Court: The whole tenor of the instructions is that the acts were not legal, so I don't see how it could become the instructions, assuming that the acts charged were illegal, and the further degree of participation by one of what he does is immaterial, so long as he does something. In other words, the old axiom that ignorance of the law is no excuse would apply.

Mr. Banfield: If the Court please, the plaintiff excepts to the failure of the Court to give the plaintiff's requested instruction No. 13, for the reason that

the defendant Local set up an affirmative defense which it has wholly failed to establish.

The Court: The Court has instructed that the whole defense was based or rested on their Exhibit C, which is out of the case, and the Court so instructs.

Mr. Banfield: I didn't have an opportunity to look these over in advance. I was unable to see that. It may be, if the Court is satisfied——

The Court: It is Instruction No. 11. [1028]

Mr. Strayer: No. 11 refers to the decision, your Honor.

The Court: And Exhibit C.

Mr. Strayer: All it does, your Honor, is instruct that Exhibit C was introduced for a limited purpose and it is not binding on the plaintiff. There is still no instruction that would prove affirmative defense.

The Court: It is taken out of the summary of the pleadings. I removed it.

Mr. Strayer: Is it the practice here, does your Honor send the pleadings to the jury?

The Court: Not in this case. The last instruction is to that effect, and only the instructions and the exhibits go in.

Mr. Strayer: I see.

Mr. Banfield: Now, the Court please, I think we will take exception to the failure of the Court to give plaintiff's requested instruction No. 16, which we think is very necessary in this case because of the amount of testimony which there has been and argument here with respect to the failure of the plaintiff to bargain collectively with Local 16, and under the

law it was under no obligation to do so whatsoever, and we think the Court should instruct the jury accordingly.

The Court: That is not an issue in this case and the Court shouldn't instruct on anything but what is in issue. [1029] We could get a lot of collateral issues that way.

Mr. Strayer: I am unfamiliar with the practice here. The practice I am used to is where there is failure to prove any element in the case or that came in which wasn't established or was argued to the jury, has no bearing. The custom is that those matters should not be considered. Now, it may be that that has been taken care of by limiting the instructions to the specific things mentioned, but as I say, I am a little unfamiliar with the practice and it is a little hard for me to reconcile. Your Honor feels by limiting the instructions to the issues you have thereby removed from the jury——

The Court: The instruction was No. 4.

Mr. Strayer: Then may we have an exception to the instruction No. 4, which was given for the reason that it is submitted as an issue of fact to the jury, whether or not it was established that the acts complained of were admitted by the various individuals as within their scope and employment. It is our feeling the evidence is undisputed and those facts were within the scope of the jury and should not have been established as an issue for the jury. That same remark would apply to Instruction No. 5, since it is made a question of fact whether acts performed were within the scope of the employment, Instruction 5,

page 8. I take exception to the word "and" instead of the word "or." [1030]

The Court: On what line?

Mr. Banfield: On line 8.

Mr. Strayer: Of Instruction No. 5.

The Court: Yes, I will change that to "or."

Mr. Andersen: Instruction 5?

Mr. Strayer: And on line 8, should be "or" instead of "and."

Mr. Strayer: Instruction No. 6 raises a problem, and perhaps the exception should come from the defendant rather than the plaintiff. The last paragraph submits to the jury whether or not in finding a verdict against either defendant or both defendants, and it has then, for myself and Mr. Banfield, that that particular act of unlawful activity was performed by Local 16 and to the effect the I.L.W.U. was involved only to the extent they aided and assisted Local 16 in its activities. If you assume Local 16 is not liable, it would seem to automatically follow that the International would not be liable. I don't think it is correct to find against the International and in favor of the Local.

Mr. Andersen: What instruction is that?

Mr. Strayer: Instruction No. 6. I think if another sentence were added that a verdict could not be returned against the International unless the Local was also found liable, that would be correct. That would also affect one of the forms of verdicts. [1031]

Mr. Banfield: The word "either" is what makes it improper, I believe, because under that alterna-

tive the jury could find the International liable and the Local not, and I feel the Court would either have to set the verdict aside or it could be argued by the defendants that if the Local—since the Local has been absolved, therefore the Court must absolve the International, so that, I believe, is clearly objectionable. It could be cured by the addition of the words "however, the International cannot be found liable unless you find the Local 16 liable."

The Court: I don't see it that way. I realize that a verdict of that kind would be inconsistent, but that is not the kind of inconsistency that would determine it. Verdicts of that kind are rather common where there is more than one defendant.

Mr. Strayer: The liability of the International, if it has any, is vicarious as the result of the activities of the Local, comparable to master and servant, where the master is charged as the result of the servant, and the jury might find a verdict against the master and not the servant.

The Court: That would appear, certainly, to be quite an objection if there was no evidence here of any acts by the International, then the relationship wouldn't be fatal, as I say, to a verdict against the parent organization.

Mr. Strayer: What your Honor has reference to is it [1032] would possible for the jury to find that the International had itself engaged in activities, induced people not to handle our products, but that the Local had not. That is possible, but contrary to the theory on which we tried the case, but it is a conceivable theory.

Mr. Andersen: So far as defendants are concerned, and each of them, may it please the Court, we wish to object first to the failure and refusal of the Court to give our instructions No. 1 through 14.

The Court: I think No. 14 was given.

Mr. Andersen: I beg your pardon?

The Court: Fourteen was given.

Mr. Andersen: Our objection with respect to No. 1, the failure of the Court to submit to the jury public policy in relation to this type of controversy in relation to the Taft-Hartley Act; with respect to our proposed Instruction No. 2, the objection is the same, mainly a failure of the Court to instruct regarding the public policy and also failure of the Court to instruct that the Taft-Hartley Act has territorial limitations and has no applicability in Canada. Also in relation to No. 2, that in so far as the public policy of the Act is concerned, in relation to argument the other day on an advised verdict, that the Juneau Spruce unreasonably refused to enter into negotiations. With respect to No. 3, our objection there is that it is at all times, as we understand the law [1033] under the Taft-Hartley Act, for an employer to bargain with any person claiming to represent employees as the Local 16 did here. The fact, of course, that they are not permanent employees, but may be intermittent employees, is an immaterial matter, and also with respect to the matters of carpenters and plumbers, etc., under the Taft-Hartley Act, those carpenters and plumbers,

etc., would have the right to bargain with the employer in the manner set forth in our instruction. With regard to Instruction No. 4—do you wish to comment or shall I continue?

The Court: I will break in.

Mr. Andersen: With respect to No. 4, we think from the facts of this case it was necessary to advise the jury that the Juneau Spruce Corporation could, with the consent of the I.W.A., have assigned the work to the Longshoremen, and that simply because an assignment may have been made means that such assignment is not irrevocable. With relation to No. 5, which relates to peaceful picketing and the rights to peaceful picketing under the laws of the United States, we object to the failure of the Court to give that instruction, particularly as it relates to peaceful picketing and relates to coercion, inducement or intimidation, and also of the failure of the Court to instruct as suggested in the final paragraph on the question of whether or not M-271, they themselves independent of Local 16 or the other defendant, eventually did [1034] what they agreed to do. With respect to Instruction 6 we object to the failure of the Court to instruct on that, as we think it embodies a very important rule, the law of agency. An agent cannot bind an agency by declaration.

The Court: I think it is in there, unless it has been overlooked because of the inability of the Reporter to be working on instructions and reporting arguments at the same time.

Mr. Andersen: With respect to requested instruction No. 7, we object to the failure of the Court to give that as it relates to the precise and definite manner in which damages must be proved. With respect to our Instruction 8, we object to the failure of the Court to do that, though the Court has ruled on that during the trial, as it relates to the intents of the contract even from one entity to another, that is based on 170 Federal, which was discussed the other day during the argument; in other words, being defendant's position that the contract did carry over and that Juneau Spruce was bound by its course of conduct by the contract that was then in effect on April 30 between Juneau Lumber and this Local, and of course also we object to the failure of the Court to instruct as set forth in the paragraph of Instruction 8, the bargain in good faith aspect of the instruction, and that is based on applicable provisions of the Taft-Hartley Act requiring employers to bargain at all times in good faith. With [1035] regard to Instruction 9 based upon 9(c)(1)(b) of the Act, and the Court failed to instruct on it, if there is a dispute between two groups or two representatives as to who should perform the work, then the employer has a right to petition the Board as set forth in those provisions. We think under the facts of this case that it is proper for that instruction to be given. With respect to No. 10, it is a different statement of the preceding instruction with regard to failure or refusal of the employer to petition the National Labor Relations

Board to have an investigation and immediate certification, and we take the position that a failure so to do under the section of the Taft-Hartley Act mentioned, is a matter which at least could be considered as a matter of mitigation of alleged claimed damages. We also object to the failure of the Court to give our requested Instruction No. 11, and of course the Court has also ruled on this question in the case in chief. That refers to the fact that contracts may be oral or written and may be—that contracts may be formed by custom and practice, customs in the particular trade or occupation, and of course give the jury an opportunity to find that a contract existed, and therefore, the contract existing, and due to the fact that it contained an arbitration clause, it would be a bar to recovery also. We object to the failure of the Court to give requested Instruction No. 12 on the grounds that the Court failed to instruct the jury on public policy of the United States [1036] as set forth in Section 201 of the Act, which is the section that enjoins both employees and employers to peaceably settle issues by conciliation, mediation or arbitration. We feel the failure of the Court to give that, particularly from the evidence that they refused and failed to negotiate, or even set down and talk, is prejudicial to the defendants' case. We object to the failure of the Court to give requested Instruction No. 13, which refers to Section 204 of the Taft-Hartley Act, again enjoining duties upon the employer which were not done and which we think

are material to the defendants' case. We object to the Court's not having given Instruction No. 14 and the words as presented. I had in mind the instruction the Court did give. I also want to object to that particular exhibit going into the jury room for two reasons: first, I think the stipulation during the course of the trial there was entered into with respect to that particular exhibit——

The Court: Was there such a stipulation?

Mr. Andersen: Yes, there was.

The Court: It seems to me that if that were so, no offer of that would have been made in evidence.

Mr. Andersen: Despite other stipulations?

The Court: You didn't object.

Mr. Andersen: Oh, yes, I did on many grounds.

Mr. Strayer: Yes, to the introduction. It was offered solely to prove [1037] lack of certification, but counsel never offered to stipulate there was a certification.

Mr. Andersen: I think the facts show neither were certified, and it was brought out in evidence.

The Court: I don't think there was any testimony to that either way.

Mr. Andersen: I may be in error, your Honor, I can't profess to accurately quote the record after two weeks of trial, but my best recollection is the record will show that was stipulated to between counsel, mainly that neither of the labor organizations involved, the I.L.W.U. as well as I.W.A., were certified. Of course, there could be collective bargaining without certifying. I object to it going to

the juryroom because it is not properly in evidence. That is why depositions are not permitted in evidence, because usually there are matters stricken.

The Court: I think the objection is well taken, but I think it should have been taken more timely, though it is not too late if the parties wish to stipulate that the Unions were not certified, and if it is stipulated it won't go in.

Mr. Strayer: I don't recall the stipulation.

The Court: I mean now.

The Strayer: We don't want our clients to be prejudiced in any way; if we feel that they will not be, we are willing to stipulate there was no certification [1038] and it will be withdrawn and not go to the jury.

Mr. Andersen: Mr. Paul states, and we never alleged we were certified——

Mr. Strayer: You denied our allegation.

Mr. Andersen: But denials and pleadings have no place in the juryroom. There is no evidence against it; therefore, as a matter of testimony it is undisputed. It is cumulative on that, but we are not objecting to evidence at this time.

The Court: But if you are willing to stipulate, I suggest calling the jury for the purpose of stipulating and the exhibit will be withdrawn.

Mr. Andersen: With respect to the instructions as given, did I say fourteen—I believe I did, your Honor—let's see, with respect to the Court's Instructions as given, with respect to Instruction No. 4, as propounded by the Court, we object to the

first paragraph on the grounds that it is too limited a definition of the common law rule of agency, and too narrowly defines the quantum of proof. We object to the third paragraph of the same instruction on the grounds that there is—that the instruction is again too narrow, and while there was testimony as to who Mr. Bulcke was and who Mr. Berry was and who Mr. Albright was, who are the only alleged International officers referred to by the plaintiff, the instruction again negatives the idea, or rather carries [1039] an insufficient amount of proof necessary to prove the agency. There is no proof in the record as to the authority of either Mr. Albright, Mr. Bulcke or Mr. Berry, in so far as the allegations of the complaint or proof are concerned, and therefore we feel this portion of the instruction is entirely too narrowly drawn and leaving out the question of any actual agency or authority that may have been conferred upon those particular people. We object to the final paragraph of page 4 on the ground that it doesn't state the law applicable to this case, and also to the further ground that in respect to time, may it please the Court, it isn't sufficiently limited. There could be no claim here so far as the International is concerned. The pleadings refer to April 10 as the date. It was true Mr. Bulcke was here six or seven months before that time and also true that Mr. Albright was here about four or five months before that time, that is, prior to the time of the complaint, and the remoteness of time in relation to Mr. Bulcke and

Mr. Albright, we feel in relation to the entire Instruction No. 4—it isn't limited to time.

The Court: It is limited by Instruction 5 as to time, and the Court can't repeat each point in each instruction.

Mr. Andersen: I understand that, your Honor. With respect to the last paragraph of Instruction 4 on page 7, we also object to that on the ground that the language is [1040] entirely too general and doesn't state the law of agency in relation to the facts of this case. Under the common law rule of agency I don't believe there is any rule that he should have known or by ordinary care a person should have known, what an agent may or may not have done. With respect to No. 6, we want to object to the language thereof, particularly in so far as it relates to a conspiracy. I don't believe under the pleadings any reference to a conspiracy is proper.

The Court: Well, it is dealt with from an evidentiary standpoint only, and of course it is pretty well settled that once the facts show or tend to show an agreement or a combination of that kind, the rules of evidence as to conspiracy apply even though not charged.

Mr. Andersen: We want to object on the further ground—I don't find the Court's reference to April 10—on the further ground in the instruction the Court did not limit it so far as the International to April 10, if they were damaged to that time, and the International wouldn't be liable. May 8 is the date

of Mr. Albright named he first mentioned subsequent to April 10. With respect to No. 11, Exhibit No. 20, Defendant's Exhibit No. C, I believe, we object to that instruction for the reasons previously stated.

Mr. Strayer: What was that?

Mr. Andersen: The Court's Instruction No. 11 on [1041] page 15—no, I think I am in error—no, Exhibit C there is the contract, I believe, that was in effect between Juneau Lumber Mill——

The Court: No, it is the contract between the Waterfront Employers and the I.L.W.U.

Mr. Andersen: And also, as Mr. Schmidt testified, between Local 16—it had Local 16 on its face——

The Court: The Juneau Lumber Mills name isn't anywhere on it.

Mr. Andersen: Local 16 is, and Mr. Schmidt testified Local 16's name is on it, and Mr. Schmidt testified that was the contract that had been in effect prior to May 1, and he testified they carried on under it. We object to the instruction upon the fact that it is a matter that should go to the jury and is fully and completely in evidence, admitted in evidence in relation to Mr. Flint's testimony, showing the contract and good faith on the part of the Longshoremen.

The Court: The position I have taken——

Mr. Andersen: I am making the objection for the record. I assume your Honor's position is the same. I think that concludes it, although it must

necessarily be a bit sketchy in the present scheme of things.

Mr. Strayer: Your Honor, may I add one exception on No. 11? We feel Exhibit C should not go to the jury for any purpose. It was offered under the promise that they [1042] would connect it and show a continuing contract and they did not. It had no relevancy, rebutting Mr. Flint. He said they never proved to him there was such a contract. I can't see what relevancy it has in the case under those circumstances.

Mr. Paul: May it please the Court, for the same reasons suggested by counsel in regard to the last paragraph in Instruction No. 6, we make the objection to the last paragraph in Instruction No. 6 and also to the form of Verdict No. 2.

The Court: You mean you think that they are either both guilty or neither?

Mr. Paul: No, no—that if the defendant Local is innocent it will be impossible for the International to be found guilty. Under the verdict they might assume the situation that the Local would be released, Verdict No. 2.

The Court: I understand. Is that all the objections there are?

Mr. Andersen: Yes, your Honor.

The Court: With reference to Exhibit C, my notes show that was introduced on the promise it would be connected up, and also show that it had been renewed. It expired by its date in 1942, and I do not recall any evidence of its renewal, and

hence I am inclined to agree with counsel for plaintiff that that also should not go to the jury.

Mr. Andersen: To which we also except, may it please [1043] the Court. The Court will recall the argument by the respective counsel on the point also. I think I noted an objection to not including C in the exhibits.

The Court: Yes, you have.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: Ladies and gentlemen of the jury, it has been stipulated by counsel that neither of the labor organizations, the defendants, is certified or has been certified, by the National Labor Relations Board and that makes it unnecessary——

Mr. Andersen: I thought that also referred to the I.W.A., all labor organizations.

The Court: I say, each defendant. I think that covered it.

Mr. Andersen: Also I.W.A., they weren't certified either.

The Court: I see, that is also the I.W.A. Not any of them is certified, and that makes it unnecessary to submit to you Plaintiff's Exhibit No. 20. There has been an instruction here about that exhibit and also Exhibit C, but neither of those exhibits will go to you.

(Whereupon the bailiffs were duly sworn to take charge of the jury.)

The Court: Ladies and gentlemen, perhaps I

should [1044] further inform you that they are not submitting a sealed verdict to you, that your verdict will be received at any time that you arrive at one. You may now retire to your jury room to consider your verdict.

(Whereupon the jury retired to the jury room at 4:45 o'clock p.m. in charge of the bailiffs, to deliberate upon a verdict.)

(Whereupon Court adjourned until 10:00 o'clock a.m., May 13, 1949, subject to call; reconvening at 9:05 a.m., May 13, 1949, with all parties present as heretofore and the jury all present in the box; whereupon the following proceedings were had:)

The Court: Ladies and gentlemen of the jury, I understand that you wish further instructions. Am I correct in that?

Mr. Foreman: Yes, sir, we do need further instructions.

The Court: Upon what points or questions?

Mr. Foreman: Primarily upon the basic duties of a juror and relevant and irrelevant points in the case, clarification of the issues at stake and the law governing them, and reiteration of the duties of a juror I think would help.

The Court: Well, the law precludes me from giving you any instructions orally. I will have to prepare the additional instruction on those points in writing and submit them [1045] to you in the same way that the remainder of the instructions

were given you. The Court will therefore be in recess as far as this case is concerned until called, and the jury may again retire.

(Whereupon the jury retired from the courtroom and Court recessed until called; reconvening at 11:35 o'clock a.m. May 13, 1949, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

The Court: Ladies and gentlemen of the jury, in response to your request, you are instructed as follows:

(Whereupon respective counsel were furnished copies of the Court's Supplementary Instructions to the Jury and the Court read his Supplementary Instructions to the Jury.)

The Court: Do the parties wish to take their exceptions in the absence of the jury?

Mr. Andersen: I assume Mr. Banfield will make the same stipulation?

Mr. Banfield: Yes.

The Court: The jury may now retire until called.

(Whereupon the jury retired from the courtroom.)

Mr. Andersen: We object, may it please the Court, to all of the instructions on one general ground with respect to all of them, that the instructions are the equivalent of a directed verdict for the plaintiff; that is, considered [1046] together. With

respect to specific instructions, we object to No. 1, the first paragraph, for the reason that it joins a commentary and the advisability of yielding to the demands or requests of the majority. The second paragraph we object to on the grounds that it is coercion of the jury in an effort to coerce a verdict in the case. With respect to Instruction No. 2, we wish to object to the first paragraph for the reason that the evidence shows only that the Longshoremen sought to negotiate with the plaintiff in the case, and there was a refusal to negotiate. This is an issue in the case, relating to the dispute. We wish to object on the further ground that there should have been a separation in the circumstances of the work done at the Alaska Steamship Dock here. This instruction throws all of the alleged claims of the plaintiff together.

We also wish to object to these instructions upon the general objection of extra-territoriality, to which we directed your Honor's attention before, also that it fails to consider the objections we made before about the necessity as required in the Act and particularly with respect to the public policy matter that we argued before, in that it negatives the public policy and doesn't take into consideration the public policy of the Act, particularly in relation to the unreasonable and arbitrary refusal of the plaintiff to bargain, which is an admitted fact in the evidence.

Also, we object in so far as it relates to the International, that the question of the quantum of evidence necessary to prove principal and agency in

order to hold the principal liable, is not adequately or properly set forth. The same objection we make to Instruction No. 3, that is with respect to the law applicable to proving principal and agent, and with respect to the word "ratification" in the instructions. We again call attention to 8(c) of the Act upon which an instruction was requested, and which should have been embodied in that instruction. The same objection that we make to No. 3 we make to No. 4. It over-simplifies the possibility of settling responsibility on the International, with respect to the absence of quantum of proof to prove agency. We object to the last portion of that instruction on page 5, which improperly sets forth—we do not understand that a principal may be held for acts of an agent when such acts have not either been specifically authorized or when particularly such acts have been forbidden, or are unlawful—particularly forbidden.

We also object to Instruction No. 5, that it is an over-simplification of the issues and a directed verdict on the part of the Court, and we think that the issues set forth in our instructions to which we incorporated these instructions, set forth and raise issues material to the defendants' case. We do not consider that the only issues are whether [1048] the things alleged here were done, although I think those objections were covered when we made our motion for an advised verdict at the close of the plaintiff's case, and we object to the refusal of the Court to give our Instruction No. 15—I believe is

the number—which was submitted with the Court's approval during the recess.

Mr. Strayer: If the Court please, with reference to Instruction No. 2, plaintiff would like an exception on the ground that it leaves as an issue for the jury whether plaintiff was damaged. We consider your Honor correctly stated the legal result, except we haven't considered it an issue by the jury, whether plaintiff did in fact suffer damage. We have shown, I think, that some damage did occur and are not agreed on what amount of damage, but I think it follows that plaintiff is entitled to damage for some amount.

With reference to defendant's exception to Instruction No. 4, the last paragraph, page 5, the use of the word "forbidden"—I think your Honor's instruction is a correct statement of the law; however, I have some doubt in my mind whether it would apply to this case. It may be abstract.

Mr. Andersen: What instruction?

Mr. Strayer: No. 4, the last paragraph, page 5—the language used there. I think the principle would be applicable where a negligent act was involved, but here the charge is aiding and assisting in an unlawful act. I doubt [1049] if that rule of law would come in. I rather think the word "forbidden" should be stricken from that instruction.

Mr. Banfield: "And forbidden."

The Court: As I recall that decision in the Colorado case, the Supreme Court held just that whether it is wanton, willful, reckless or forbidden—

it may be that it is abstract in the sense here, but, however, I think the instruction I gave yesterday submitted by you had the same qualification in it.

Mr. Strayer: I don't recall which instruction your Honor refers to. A Requested Instruction, do you mean, your Honor?

The Court: Yes. It was a short instruction. I think it was your instruction on the scope of employment.

Mr. Strayer: No, your Honor, there is no reference in that instruction.

Mr. Banfield: If your Honor please, you must be referring to Instruction 12, the last line, our requested Instruction No. 12 which was rejected, but the word "forbidden" I am quite sure we never used.

Mr. Andersen: I would like to add one further objection also, your Honor.

The Court: That part of the clause containing the word "forbidden" is stricken, and lines 20 and 21 of Instruction 2 are also stricken. You say you have another objection? [1050]

Mr. Andersen: Yes, I have, to Supplemental Instruction No. 1, may it please the Court. I think that should be amended in general to advise the jury that this instruction is not to be too literally construed, that it is the duty of each juror to make up his own individual mind and should not change his opinion regardless of the majority, unless and until he or she personally becomes convinced by virtue of all the evidence and circumstances of the case, that his or her opinion should be changed.

The Court: I think that is covered by Instruction No. 13 given yesterday.

Mr. Andersen: I don't have that before me, your Honor.

The Court: If that is all, we will call the jury in.

Mr. Strayer: May I get it straight on my copy, of Instruction 2? Our lines don't coincide. Could your Honor tell us the starting words?

The Court: The first two of the last three lines.

Mr. Strayer: And Instruction No. 4, the words stricken are "And forbidden by the principal or employer"? Is that correct?

The Court: Yes.

Mr. Andersen: What are you striking? What instruction? [1051]

Mr. Strayer: No. 4, page 5.

Mr. Andersen: Of the new instructions—what is stricken?

Mr. Strayer: "And forbidden by the principal or employer."

The Court: Call the jury.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: Ladies and gentlemen of the jury, you may now retire for further deliberation.

Mr. Banfield: If the Court please, does the Court wish to call attention to the changes?

The Court: I have made them.

Mr. Banfield: As long as they know about them——

The Court: I made a few slight changes, ladies and gentlemen, in two instructions, by crossing some words out and you can see those for yourselves.

(Whereupon the jury retired from the courtroom and Court was recessed at 12:10 o'clock p.m., May 13, 1949.)

(Thereafter, Court having reconvened at 2:00 o'clock p.m., May 13, 1949, the plaintiff appearing by Norman Banfield and Manley B. Strayer, of its attorneys; the defendants appearing by William L. Paul, Jr., and George R. Andersen, of their attorneys and the jury being absent from the courtroom; and before adjournment the following occurred:) [1052]

The Court: By the way, before counsel in the case—before counsel leave the courtroom, I am inclined to allow the jury to return a sealed verdict if they don't agree by a certain time today or tonight. I overlooked the fact when I told them they could return a verdict any time that nobody at our house can hear the telephone unless they happen to be downstairs.

Mr. Andersen: Suppose they don't agree—that means they just stay? Only if they reach a verdict——

The Court: They can go home only if they reach a verdict.

Mr. Andersen: May I be permitted—when I was objecting to the Supplemental Instructions I don't know whether I gave the reason as to No. 15, our purported Instruction No. 15. The basis upon

which I object—it may be repetitious, your Honor—was that the Court failed and refused to give the instructions and failed to apprise the jury of those statements and declarations and arguments, etc., which under the section referred to they may make and do under the terms of the Act itself.

The Court: Well, I took the view that it was, rather the aspect was not connected there. As I see it, whatever declarations or statements were made are not so important. It is the acts that followed, the acts set forth in the complaint. I think I will call the jury in about 5:00 o'clock [1053] then for the purpose of instructing them with reference to a sealed verdict.

(Whereupon, Court was recessed.)

(Thereafter, Court reconvened at 4:15 o'clock p.m., May 13, 1949, with all parties present as heretofore with the exception of Mr. Roden, and the jury all present in the box; whereupon the following proceedings were had:)

The Court: Ladies and gentlemen, have you reached a verdict?

Mr. Foreman: We have, your Honor.

The Court: You may hand it to the Clerk. You may read and file the verdict.

Whereupon Verdict No. 1 was read by the Clerk, finding for the plaintiff and against both defendants and assessing plaintiff's damages in the sum of $750,000.00; and thereupon, at the request of counsel for the defendants, the jury was polled and

each member of the jury answered individually in the affirmative as to his concurrence in the verdict rendered, with no negative answer, whereupon the jury was excused and retired from the courtroom.

Mr. Andersen: I understand motions for new trials, according to your rules, are made in writing?

The Court: Yes.

Mr. Andersen: The time period is what—three days or ten days? [1054]

The Court: Well——

Mr. Banfield: Two days; two or three days.

The Court: I am confused as between criminal cases and civil cases—three days, within three days.

Mr. Andersen: Do you exclude the first day?

The Court: Yes, and holidays.

Mr. Banfield: What was that?

The Court: Three days.

Mr. Banfield: And if the Court please, I intend to be out of town for a few days. I expect to be back for the next motion day. I just want to tell Mr. Andersen.

Mr. Paul: If there is a motion made, it only has to be made within three days.

Mr. Banfield: Yes, but I thought Mr. Andersen might want to get away and he might want to make it and argue it.

Mr. Andersen: I guess it would go over until the usual motion day. I could check, but I assume the time for appeal only runs from and after the judgment?

The Court: The judgment.

Mr. Andersen: The judgment would be allowed after the termination of the motion?

The Court: Yes, that stays any action as far as judgment is concerned.

Mr. Banfield: We will take the motion up next Friday. [1055]

Mr. Andersen: Then there is no judgment entered now?

The Court: No.

(Whereupon Court was adjourned.)

(Thereafter, Court having convened at 10:00 o'clock a.m., May 20, 1949, the plaintiff appearing by Norman Banfield of its attorneys, and defendants appearing by William L. Paul, Jr., of their attorneys, the above-entitled cause came on for hearing on motions and the following occurred:)

Mr. Paul: I have informed counsel that the first two motions will be submitted, your Honor; however, I should like to have the opportunity of stating my position with regard to the motion for additional time.

The Court: Well, you may argue that in the regular order.

Mr. Banfield: Plaintiff is ready.

The Court: You say the first two motions you submit without argument?

Mr. Paul: Yes, your Honor.

The Court: The motions will be denied, therefore, and the third motion will be argued in the regular order.

Clerk of Court: Isn't that last one the one you submitted to the Court the other day and the Court denied?

Mr. Paul: The Court has given me permission to submit my authority. [1056]

Mr. Banfield: It would be all right to have a ruling on the motion for judgment notwithstanding the verdict, but the second is a motion for a new trial. If that is for a new trial, if it is denied, that third couldn't be argued. Mr. Paul, I think, means the motion may be denied for judgment notwithstanding the verdict and then argue the motion for additional time and the other one.

Mr. Paul: I don't think it is inconsistent.

The Court: I think the inconsistency is more apparent than real.

(Thereafter, and before adjournment, the above-entitled cause was called up for hearing on the motions and the following occurred:)

Mr. Paul: May it please the court, the motion and affidavit for additional time within which to file additional grounds and supporting affidavits, re motion for new trial, was filed at 4:45 last Monday, which I understand was the last day within which the usual three days allowed for the filing of the motion. It had been approximately one hour before that the main motion for new trial was filed. We conceived it advisable on the parts of the defendants to not include in the main motion any ground that the jury had been swayed by passion or preju-

dice, because we simply didn't have the information and didn't want to be put in a position of alleging the ground when we had at that time no basis, [1057] no suspicion that such a ground existed. At that time I understand the Court became aware of the motion for additional time and overruled the motion. I believe it was the next day I addressed myself to the Court, asking this opportunity to present authorities in support of the motion, and I think we indicated at that time that no further investigation would be made of any of the jurors by counsel for the defendants because of the nature of the public policy which the Court believed applicable here, that members of the jury should not be questioned.

As I have stated to the Court, I am most circumspect in my conduct and of the rulings of the Court not to infringe upon anything, or any possibility of infringing upon anything. I will be very brief.

To conclude, I have done nothing further in the investigation of individual jurors. Now, I understand from what the Court has said that there is in the Court's mind the public policy that the verdict of the jury should be given every encouragement to stand; that is to say, attorneys on the losing side are not permitted to quiz jurors, to ascertain if misconduct had occurred in deliberations of the jury. Now, I am unacquainted with such public policy and in my investigation of the authorities I can find I suggest——

The Court: Better not argue that point. I am

certain the public policy is to discourage parties or litigants [1058] from quizzing jurors as to the method by which they arrive at a verdict.

Mr. Paul: I principally make one citation to the Court. It is very close in point, to support my position. That appears in Volume 52 ALR on page 33.

The Court: What is the topic?

Mr. Paul: Quotient verdict. The citation I have given is in the annotation. The annotation begins at page 41 and is entitled Quotient Verdicts. The citation beginning at page 33 is the case of Benjamin vs. Helena Light and Railway Company, Montana Supreme Court, discussing the topic of quotient verdicts. I need only make reference to what the Court had before it, which appears on page 37. There affidavits were obtained from every single member, with the possible exception of one—every single member of the jury. That indicates the scope of the examination of the jury on both sides. The Court concludes what it feels is the general principle at the end of page 40, from which I gather it is the primary public policy that the jury shall obey the instructions of the Court and apparently everything that both sides had done in examining the jury after their deliberations and their discharge, in getting all these affidavits, that there was nothing wrong connected with it in view of the primary public policy that the jury follow the instructions of the Court [1059]

Mr. Banfield: If the Court please, Mr. Paul has failed to state what he intends to show by these

affidavits, and I think that is quite material in this case. He states in his motion that he believes they acted with passion and prejudice and now gives a citation with reference to a quotient verdict. He seems to be flitting from one ground to another. I would like to call the attention of the Court to the fact there was a poll of the jury in this case. The rule stated in 64 Corpus Juris 1062 is, and this is under the subject of inquiry as to the grounds of verdict, that "If the poll of the jury is conducted by counsel, a juror cannot be interrogated as to the grounds of his assent or dissent." If he is talking about a quotient verdict, that would be very applicable, and the poll of the jury was made by the defendants.

In 64 Corpus Juris page 1108 it is stated—this is under the heading "Evidence Affecting Verdict—a. Affidavits and Testimony of Jurors to Sustain, Impeach, or Explain. Jurors will not be heard to impeach a verdict duly rendered by them and recorded, and their affidavits introduced for such purpose will be disregarded. Thus jurors cannot impeach their verdict by affidavits or testimony that the verdict was the result of misapprehension, or mistake of fact, or was arrived at by lot, or by averaging estimates, or to disclose the incompetency or misconduct of their fellow jurors, or to show what improper [1060] methods they employed to arrive at the verdict." This is directly in point on the quotient verdict. "Or what items were allowed or disallowed in computing the amount of the ver-

dict, or that they did not understand the effect of their verdict, or that, had the juror known of certain evidence, he would not have rendered the same verdict, or that improper matters were considered by the jury." Now, affidavits can be used under these circumstances. "But affidavits of jurors are admissible to show that the verdict, as received and entered of record, by reason of a mistake does not embody the true finding of the jury, or to correct an erroneous statement of the verdict to the court or entry by its clerk, or to remove an ambiguity, or, where a sealed verdict is returned without specifying the amount of the recovery, to show what they intended to be understood as their verdict. Jurors are competent witnesses for the proof of extraneous facts which may have influenced their conduct, as, for example, coercion on the part of the bailiff, or matters which took place outside the court, but what took place while the jury were kept in the custody of the officer of the court for the purpose of deliberation is not matter outside of court. Affidavits or evidence of jurors are admissible when made in support of or to explain a verdict, as, for instance, by showing whether interest was computed on plaintiff's claim." And that is the law. The rule is that the Court can refuse [1061] to even summon the jurors, but certainly for counsel to go out and secure jurors for the purpose here, is absolutely out of order and cannot be done under any circumstances, but if there is reason to believe there is a mistake, then the jurors can be summoned, but not for invading the privacy of the jury.

We ask at this time that the motion be denied and the motion for a new trial be denied, and judgment entered, and the papers are prepared.

Mr. Paul: May it please the Court, in preparing my argument here I got about every citation and I refer to 46 ALR, page 1509, in which the editors express their concern for a statement which appeared in RCL. It is very much like counsel read to the Court from Corpus Juris.

The Court: Here is the view I take of the motion: it is predicated on the possibility of obtaining something which there has been a week to obtain, and there is no showing made that it has been obtained. It seems to me all the motion sets forth is speculation; that is, the motion is made for the purpose of obtaining an opportunity to question the jurors in the hope that will be found. It has been a week since the verdict. I don't see how I can consider it. It doesn't present ground, it presents hopes, and that isn't sufficient to move the Court with. These items are beside the point. When you speak of a quotient verdict—I haven't [1062] looked into it. It might upset it, but there is nothing here to show that there was.

Mr. Paul: As the affidavit indicates, I had commenced my investigation, your Honor, and I will be frank to state to the Court I had been able to talk to one juror by the time the Court overruled the motion, but because I might be presuming on the prerogatives by continuing the investigation as an officer of the Court, I withheld; otherwise, I think

I would have been able to present affidavits this morning. I felt from the one there was reasonable grounds for continuing the investigation and not hopes.

The Court: I am not speaking of what is in your mind, but I can only consider what is in this motion. Even though there may be some ground for questioning the jurors, it seems to me three days is sufficient time to obtain something definite. The Court is confronted with a motion, not speculation.

Mr. Paul: The three days included Saturday and Sunday, and it was almost impossible to do anything during those times, so I concluded the investigation with one juror, and spent the rest of the time writing up the motion for new trial and about four thirty in the afternoon realized I wouldn't have time, so I filed the additional motion we are now discussing. As I say, I may have been too cautious in following this procedure. I didn't want to do anything wrong [1063] in so far as this Court is concerned by examining jurors. My information Tuesday morning was that the Court overruled my motion. In the face of that it seemed useless and would be bordering on contempt. I didn't care to undertake that responsibility.

The Court: I had no idea this was the same motion I denied several days ago. I thought it was another motion, but as I say, it certainly lacks the specification of any definite ground upon which the Court can act. The motion is denied.

Mr. Banfield: If the Court please, I have the

orders here prepared. I have the form of the judgment prepared in this case.

Mr. Paul: Well, I am going to object to any consideration, your Honor, except upon notice.

Mr. Banfield: I want to present it to the Court at this time, one reason is to have the attorneys' fees set by the Court. The complaint requested attorneys' fees of $10,000.00 in this case, and plaintiff's costs and disbursements.

The Court: Do you have any objection?

Mr. Paul: It is the first time I have seen it, and I would like to have an opportunity of getting in touch with Mr. Andersen.

The Court: You wish to have time to file objections? [1064]

Mr. Paul: It was just put in front of me.

Mr. Banfield: It is a matter of right as an ex-party matter. Two days are allowed after entry to take exception. The judgment can be entered by the Court. It is not necessary that approval of judgment be given by the adverse party, and we don't want this judgment to lay here until next June 6 when the Court returns. There is nothing to a judgment of this kind, it can be examined in one minute.

The Court: Except in the practice here, the practice has been to give the opposing side an opportunity to examine it and determine whether they want to object and to have the objections heard.

Mr. Paul: Do I understand your Honor that there will be even no motion day next Friday?

The Court: No, there is not going to be any motion day. Well, it seems to me that the form of the judgment here is so short that you could determine whether you want to object to it and if so, state the grounds of your objection.

Mr. Paul: My point, your Honor, is, following the usual practice, I don't have the final say. It is true I am the attorney of record, but Mr. Andersen is still in the case and I am duty-bound to consult with him.

The Court: Well, Mr. Andersen isn't here.

Mr. Paul: He isn't here, he is in San Francisco. I certainly could do that by next Friday and get an answer back, [1065] too.

The Court: Well, you mean no ground of objection occurs to you, but you think Mr. Andersen might have some?

Mr. Paul: I haven't even looked at it.

The Court: Well, the Court won't pass on it at this minute.

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz. Juneau Spruce Corporation, a corporation, vs. International Longshoremen's & Warehousemen's Union, an unincorporated association, and International Longshore-

men's & Warehousemen's Union, Local 16, an unincorporated association, No. 5996A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and caused the same to be reduced to typewriting;

That the foregoing pages numbered 1 to 1066, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 1st day of March, 1950.

/s/ MILDRED K. MAYNARD,

Official Court Reporter, U. S. District Court, First Division, Territory of Alaska.

[Endorsed]: Filed April 11, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska, Division No. 1—ss.

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the foregoing and hereto attached 212 pages of typewritten matter, numbered from 1 to 212, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the

record prepared in accordance with the Praecipe, Supplemental Praecipe, Suplemental Counter Praecipe and Supplemental Praecipe of the Appellant on file herein and made a part hereof, in Cause # 5996-A, wherein the International Longshoremen's and Warehousemen's Union, an unincorporated association, is Defendant-Appellant and Juneau Spruce Corporation, a corporation, is Plaintiff-Appellee, as the same appears of record and on file in my office; that said record is by virtue of an appeal and Citation issued in this cause and the return thereof in accordance therewith.

And I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certification amounting to Sixty Nine Dollars and 75/100 has been paid to me by Counsel for Appellant.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 20th day of April, 1950.

/s/ J. W. LEIVERS,
Clerk of District Court.

[Endorsed]: No. 12527. United States Court of Appeals for the Ninth Circuit. International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16, Appellants, vs. Juneau Spruce Corporation, a Corporation, Appellee. Transcript of Record. Appeal from the District Court of the Territory of Alaska, Division Number One.

Filed April 24, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12527

JUNEAU SPRUCE CORPORATION,

Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants-Appellants.

AFFIDAVIT OF GEORGE R. ANDERSEN

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendants-appellants in the above-entitled matter. That on or about the 9th day of June, 1949, the Judge of the District Court for the Territory of Alaska, Division No. 1, made and entered his order allowing an appeal, fixing a cost bond, and setting time for the settlement of a bill of exceptions in the above-entitled matter which is on appeal from the said District Court for the Territory of Alaska to the above-entitled Court.

On or about the 9th day of June, 1949, a stipulation was entered into by and between the attorneys for the defendants-appellants and the attorneys for the plaintiff-appellee in this matter and approved by the Court, a true and correct copy of which stipulation is attached hereto and incorporated herein by this reference and marked Exhibit A.

That said stipulation provides, among other things, that the defendants-appellants' statement of points on appeal and the designation of record, including a transcript of testimony, may await thirty days after filing of the transcript of testimony with the Clerk of the District Court for the Territory of Alaska, Division No. 1, by the reporter of the said Court. Such a stipulation was made necessary because of the fact that it is impossible for defendants-appellants to properly prepare their designation of record on appeal and their statement of points on appeal until the said transcript is filed as aforesaid.

The Court below has approved this stipulation and your affiant prays that this Court also approve this stipulation.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 15th day of June, 1949.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

EXHIBIT A

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 5986-A

JUNEAU SPRUCE CORPORATION,
Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,
Defendants-Appellants.

STIPULATION

It is hereby stipulated between counsel for the respective parties in the above-entitled cause that

the defendants' statement of points on appeal and the designation of the record including transcript of testimony may await 30 days after the filing of the transcript of testimony with the Clerk of this Court by the Court Reporter.

It is further stipulated that in printing the record herein that the title of the court and cause in full on all papers may be omitted except on the first page of said record, and that there shall be inserted in place of said titles on all papers used as a part of said records the words "Title of Court and Cause." Also that all endorsements on said papers used as a part of said record shall be omitted except the Clerk's file marks and the admission of service.

Done at Juneau, Alaska, this June 9, 1949.

/s/ WM. J. PAUL, JW
Of Attorneys for Appellants.

/s/ NORMAN BANFIELD,
Of Attorneys for Appellee.

Good cause appearing herein, it is So Ordered. June 9, 1949.

/s/ GEORGE W. FOLTA,
Judge.

In the United States Court of Appeals
for the Ninth Circuit

JUNEAU SPRUCE CORPORATION,
Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,
Defendants-Appellants.

ORDER

Upon the reading and filing of the affidavit of George R. Andersen, Esq., and good cause therefor appearing,

It Is Hereby Ordered that the stipulation entered into by and between counsel for the plaintiff-appellee and counsel for the defendants-appellants on June 9, 1949, and approved by the Judge of the District Court for the Territory of Alaska, Division No. 1, in the above-entitled cause which bears No. 5986-A in the records of the said Court be, and the same is hereby, approved.

Dated: June 16, 1949.

/s/ WILLIAM HEALY,
Judge of the U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed June 16, 1949.

At a Stated Term, to wit: The October Term 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the seventeenth day of January in the year of our Lord one thousand nine hundred and fifty.

Present: William Healy, Circuit Judge, Presiding;
Honorable Homer T. Bone, Circuit Judge;
Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND DOCKET CAUSE

Upon consideration of the motion of appellants for an extension of time to file the transcript of record herein, and docket above cause in this court, and good cause therefor appearing, It Is Ordered that the time within which the certified transcript of record may be filed and cause docketed in this court be, and hereby is extended to and including sixty days from the filing of the transcript of testimony with the District Court for the Territory of Alaska, and that the time within which said transcript of testimony may be filed in said District Court of Alaska is extended to March 10, 1950.

[Title of Court of Appeals and Cause.]

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO PERFECT APPEAL AND FILE TRANSCRIPT

Come now the defendants in the above-entitled matter and move the above-entitled Court for its order permitting defendants to have until 60 days after the filing of the transcript of the testimony with the Clerk of the United States District Court for the District of Alaska within which to perfect their said appeal and to file herein all necessary documents in support thereof.

This motion is based upon the Affidavit of George R. Andersen attached hereto.

Dated: August 20, 1949.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.

/s/ GEORGE R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN IN SUPPORT OF MOTION FOR EXTENSION OF TIME WITHIN WHICH TO PERFECT APPEAL AND FILE TRANSCRIPT

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is of counsel for defendants-appellants in the above-entitled cause. That said cause was tried before the United States District Court in and for the Territory of Alaska at Juneau, Alaska; that on June 9, 1949, the Notice of Appeal and Order Allowing Appeal to the United States Court of Appeals for the Ninth Circuit were filed in the office of the Clerk of said United States District Court.

That by rule of the said District Court in Alaska and the statutes thereunto appertaining, said Court has authority to allow only 90 days from the time of filing of notice of appeal within which to settle the bill of exceptions under the practice of that Court; that on June 9, 1949, said District Court granted appellants herein 90 days from June 9, 1949, within which to settle the bill of exceptions herein.

That in order to settle the bill of exceptions, it is necessary to have the transcript of testimony taken at the trial, and by virtue of the great volume of business conducted by said United States District

Court in Alaska, affiant has been advised by the reporter of said Court that it will be at least six months from said June 9, 1949, before said transcript of testimony has been completed.

That in order to protect the time and rights of appellants herein, it is necessary that the above-entitled Court, to which jurisdiction has been transferred by said appeal, grant an extension of time to 60 days after the filing of said transcript of testimony in said United States District Court, within which said defendants-appellants may perfect their appeal in this Court.

That in this case counsel for the respective parties have agreed that in lieu of the bill of exceptions, the transcript itself may be filed and the appeal taken in consonance with the new Federal Rules of Procedure applicable to United States District Courts and Circuit Courts of Appeal.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 20th day of August, 1949.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

[Title of Court of Appeals and Cause.]

ORDER

Upon considering the motion of defendants-appellants herein, supported by the Affidavit George R. Andersen, Esq., and good cause appearing therefor:

It Is Hereby Ordered that said defendants-appellants may have to and including 60 days from the filing of the transcript of testimony in the United States District Court for the Territory of Alaska within which to perfect their appeal herein by docketing said transcript of testimony, together with all other necessary papers in support of said appeal; and it is further Ordered that the time within which the transcript of testimony may be filed in the United States District Court for the Territory of Alaska is extended to January 10, 1950.

Dated: Aug. 25, 1949.

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

/s/ WM. E. ORR,

Judges of the U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed August 29, 1949.

At a Stated Term, to wit: The October Term, 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the tenth day of March in the year of our Lord one thousand nine hundred and fifty.

Present: Honorable Clifton Mathews, Circuit Judge, Presiding;

Honorable Homer T. Bone, Circuit Judge;

Honorable William C. Mathes, District Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND DOCKET CAUSE

Upon consideration of the motion of appellants for an extension of time to file the transcript of record herein, and docket above cause in this court, and good cause therefor appearing, It Is Ordered that the time within which the reporter's transcript of testimony may be filed in the District Court for the Territory of Alaska, and the certified transcript of record filed and cause docketed in this court be, and hereby is extended to and including May 10, 1950.

[Title of District Court and Cause.]

STIPULATION AS TO RULES

It is hereby stipulated and agreed by and between counsel for the respective parties in this cause that the appeal, preparation of briefs and the form of appeal may be had in accordance with the Rules of Civil Procedure for the District Courts of the United States which have become applicable to Alaska since the judgment of the District Court was entered herein.

Juneau, Alaska, March 8, 1950.

/s/ WILLIAM L. PAUL, JR.,
Of Counsel for Appellants.

/s/ N. C. BANFIELD,
Of Counsel for Appellee.

[Title of Court of Appeals and Cause.]

MOTION FOR ORDER PERMITTING APPEAL IN COMPLIANCE WITH NEW RULES OF FEDERAL CIVIL PROCEDURE

Come now the defendants in the above-entitled cause and move the above-entitled Court for its order permitting the above appeal to be taken and had pursuant to the new Rules of Federal Civil Procedure presently in effect and governing appeals from District Courts of the United States, including

the Territories, to the Court of Appeals for the Ninth Circuit.

This motion is made upon the affidavit of George R. Andersen attached hereto.

Dated: March 21, 1950.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.

By /s/ G. R. ANDERSEN,
Counsel for
Defendants-Appellants.

So Ordered:

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

/s/ WALTER L. POPE,

U. S. Circuit Judges.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is one of the attorneys for defendants-appellants named above. That the above-entitled cause was tried before the United States District Court for the Territory of Alaska and judgment therein entered in May, 1948, at a time prior to

the time when the new Rules of Federal Procedure were applicable to said Territory.

That since said time said new Rules of Federal Procedure, by Act of Congress, have been made applicable to the said Territory of Alaska. That the parties hereto, through their respective counsel, have entered into a stipulation, the original of which is filed with the United States District Court for the Territory of Alaska at Juneau, Alaska, and a copy of which is annexed hereto.

That pursuant to said stipulation, defendants request the above-entitled Court to approve said stipulation and permit said appeal to be taken in accordance with said new Rules.

/s/ G. R. ANDERSEN.

Subscribed and sworn to before me this 21st day of March, 1950.

[Seal] /s/ AGNES QUAVE,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

[Endorsed]: Filed April 6, 1950.

[Title of Court of Appeals and Cause.]

APPELLANTS' STATEMENT OF POINTS ON APPEAL

To the Honorable William E. Denman and Associate Justices of the United States Circuit Court of Appeals, for the Ninth Circuit:

Come now the appellants herein and respectfully state that the points upon which they intend to rely on appeal are each and every of those points set forth in defendants-appellants' assignments of error filed with the United States District Court for the Territory of Alaska, at Juneau, being part of the record filed in the above-entitled Court, pursuant to Rule 19(6) of the above-entitled Court.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ GEORGE R. ANDERSEN,

Attorneys for
Defendants-Appellants.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF THE RECORD ON APPEAL

Come now the defendants and appellants in the above-entitled cause and, pursuant to Rule 19(6) of this Court, designate the following as the record to be printed on appeal:

1. The entire reporter's transcript of all testimony;
2. The instructions given by the Court;
3. The instructions requested by the defendants-appellants and refused by the Court;
4. The entire Clerk's transcript;
5. With respect to all exhibits, subject to the approval of the above-entitled Court, defendants and appellants pray that said original exhibits be not printed, but that they may be referred to by the parties hereto and considered by the Court as though incorporated in the printed record.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ G. R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

MOTION FOR PERMISSION TO NOT PRINT EXHIBITS FILED IN THE ABOVE CAUSE

Come now the defendants and appellants in the above-entitled cause, through George R. Andersen, of counsel, and respectfully request the above-entitled Court to grant its permission to permit all of the exhibits herein to be not included in the printed record, but that said exhibits may be considered, and be referred to, by the Court and counsel as though contained in the printed record on appeal.

This motion is supported by the affidavit of George R. Andersen attached hereto.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ GEORGE R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN, OF COUNSEL, IN SUPPORT OF MOTION FOR PERMISSION TO EXCLUDE EXHIBITS FROM THE PRINTED RECORD ON APPEAL AND PERMITTING COURT AND COUNSEL TO REVIEW THE SAME

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is counsel for the defendants and appellants herein.

That there are many and bulky printed and written exhibits in the above-entitled cause, including lengthy contracts, printed by-laws and constitutions of trade unions, newspapers and other bulky documents; that a great deal of the relevant portion of said exhibits has been read into the record of this cause and will be printed in the record on appeal; that in the opinion of counsel the proper and expeditious handling of this cause on appeal would best be subserved by not printing said exhibits as part of the record on appeal, but by permitting said exhibits to be considered and referred to by the Court and the parties hereto as though they were actually printed and incorporated in the record on appeal.

Wherefore, defendants and appellants pray that

said Court grant its permission to permit all of the exhibits in the said cause to be deemed a part of the printed record herein and that they may be referred to by the Court and counsel as though printed in said printed record.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 29th day of April, 1950.

[Seal] /s/ AGNES QUAVE,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

So Ordered:

/s/ WILLIAM HEALY,

/s/ HOMER BONE,

/s/ WALTER L. POPE,

United States Circuit Judges.

[Endorsed]: Filed May 11, 1950.